(17)

No. 99-1529-CSX Title: Donna Rae Egelhoff, Petitioner
v.
Samantha Egelhoff, a Minor, by and Through her Natural Parent Kate Breiner, and David Egelhoff

Docketed:
March 17, 2000 Court: Supreme Court of Washington

Entry	Date	Proceedings and Orders
	Feb 1 2000	Application (99A618) to extend the time to file a petition for a writ of certiorari from February 16, 2000 to March 17, 2000, submitted to Justice O'Connor.
	Feb 3 2000	Application (99A618) granted by Justice O'Connor extending the time to file until March 17, 2000.
	Feb 14 2000	(99A618)Order granting extension to and including March 17, 2000 reentered in 99A650, after automatic bakruptcy stay lifted.
	Feb 14 2000	Application (99A650) to extend the time to file a petition for a writ of certiorari from February 16, 2000 to March 17, 2000, submitted to Justice O'Connor.
	Feb 14 2000	Application (99A650) granted by Justice O'Connor extending the time to file until March 17, 2000.
	Mar 16 2000	Petition for writ of certiorari filed. (Response due May 16, 2000)
	Mar 28 2000	Application (99A803) for a stay of enforcement of the judgment below pending disposition of the petition for a writ of certiorari, submitted to Justice O'Connor.
	Mar 29 2000	Response to application (99A803) from Samantha Egelhoff, et al., requested by Justice O'Connor, due April 7, 2000.
	Apr 6 2000	Response to application (99A803) filed by Samantha Egelhoff, et al.,.
	Apr 7 2000	Application (99A803) granted by Justice O'Connor.
	Apr 13 2000	Order extending time to file response to petition until May 16, 2000.
	May 15 2000	Motion of Boeing Company, et al. for leave to file a brief as amici curiae filed.
	May 16 2000	Brief of respondents Samantha Egelhoff, et al. in opposition filed.
	May 16 2000	Motion of American Council of Life Insurers for leave to file a brief as amicus curiae filed.
	May 19 2000	Letter with lower court attachment submitted by counsel for the respondent.
	May 30 2000	DISTRIBUTED for Conference of June 15, 2000
	May 30 2000	Reply brief of petitioner Donna R. Egelhoff filed.
	Jun 19 2000	Motion of Boeing Company, et al. for leave to file a brief as amici curiae GRANTED.
	Jun 19 2000	Motion of American Council of Life Insurers for leave to file a brief as amicus curiae GRANTED.
	Jun 19 2000	Petition GRANTED. SET FOR ARGUMENT November 8, 2000. **********
	Jul 10 2000	Blanket consent to the filing of amicus briefs in favor of either party received from counsel for the petitioner and counsel for the respondents.

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No. 99-1529-CSX

Entry	Date	Proceedings and Orders
	Jul 14 2000	Order extending time to file petitioner's brief on the merits to and including August 11, 2000.
	Jul 21 2000	Order extending time to file respondents' brief on the merits to and including September 18, 2000.
	Jul 27 2000	Record filed.
	Aug 3 2000	Brief amicus curiae of National Coordinating Committee for Multiemployer Plans filed.
	Aug 10 2000	Brief amicus curiae of AARP filed.
	Aug 11 2000	Joint appendix filed.
	Aug 11 2000	Brief of petitioner Donna R. Egelhoff filed.
	Aug 11 2000	Brief amicus curiae of petitioner Western Conference of Teamsters Pension Trust Fund filed.
	Aug 11 2000	Brief amici curiae of Boeing Company, et al. filed.
	Aug 11 2000	Brief amicus curiae of United States filed.
	Sep 18 2000	Brief amici curiae of National Conference of State Legislatures, et al. filed.
	Sep 18 2000	Brief amici curiae of Washington, et al. filed.
	Sep 19 2000	Brief of respondents Samantha Egelhoff, et al. filed.
	Sep 20 2000	LODGING consisting of twenty copies of material submitted by counsel for the respondents.
	Sep 22 2000	CIRCULATED.
	Oct 2 2000	Motion of the Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument filed.
	Oct 13 2000	Motion of Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument DISTRIBUTED.
	Oct 16 2000	Motion of the Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument GRANTED.
	Oct 19 2000	Reply brief of petitioner Donna R. Egelhoff filed.
	Nov 3 2000	Letter from respondent received and distributed.
	Nov 8 2000	ARGUED.

(1)
Supreme Court, U.S.
FILED
991529 MAR 16 2000
OFFICE OF THE CLERK

No.

IN THE

Supreme Court of the United States

DONNA RAE EGELHOFF,

Petitioner,

v.

SAMANTHA EGELHOFF, A MINOR, BY AND THROUGH HER NATURAL PARENT KATE BREINER, AND DAVID EGELHOFF,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of Washington

PETITION FOR A WRIT OF CERTIORARI

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10088

QUESTIONS PRESENTED

1. Whether the Employee Retirement Income Security Act, 29 U.S.C. §§ 1001-1461 ("ERISA" or the "Act"), preempts the use of state law to override ERISA beneficiary designations made pursuant to the terms of ERISA plans.

2. Whether ERISA's anti-alienation provision, 29 U.S.C. § 1056(d)(1), which generally precludes alienation or assignment of ERISA pension plan benefits, preempts state laws that purport to deprive designated ERISA beneficiaries of their benefits under an ERISA pension plan.

PARTIES TO THE PROCEEDING

The caption contains the names of all of the parties to the proceeding in the court below.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Donna Rae Egelhoff respectfully petitions this Court for a writ of certiorari to review the judgment of the Supreme Court of Washington in this case. Review is warranted because the decision below exacerbates an existing and widespread circuit conflict on the first question presented in this case, and creates a conflict among the state and federal appellate courts on the second question presented. Review is also appropriate because the decision below is inconsistent with decisions of this Court, including *Boggs v. Boggs*, 520 U.S. 833 (1997). The questions presented in this case are frequently recurring and exceedingly important, and the rule of law applied by the court below strikes at the heart of the nationwide uniformity that is ERISA's central goal and promise. For all these reasons, certiorari should be granted.

OPINIONS BELOW

The opinion of the Supreme Court of Washington (App., *infra*, 1a-28a) is reported at 139 Wash. 2d 557, 989 P.2d 80 (1999). The opinion of the Court of Appeals of Washington (App., *infra*, 29a-44a) is reported at 93 Wash. App. 314, 968 P.2d 924 (1998). The summary judgment orders of the Superior Court of Washington for Pierce County (App., *infra*, 45a-46a, 47a-48a) are not reported.

JURISDICTION

The judgment of the Supreme Court of Washington was entered on November 18, 1999. On February 14, 2000, Justice O'Connor extended the time for filing a petition for a writ of certiorari to and including March 17, 2000. *See* Application No. 99A650. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Supremacy Clause of the Constitution of the United States provides:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. CONST. art. VI, cl. 2.

ERISA's preemption provision, § 514(a) of the Act, provides in pertinent part:

> Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title. . . .

29 U.S.C. § 1144(a).

ERISA's anti-alienation provision, § 206(d) of the Act, provides in pertinent part: "Each pension plan shall provide that benefits provided under the plan may not be assigned or alienated." 29 U.S.C. § 1056(d)(1).

ERISA's fiduciary duty provision, § 404 of the Act, provides in pertinent part: "[A] fiduciary shall discharge his duties with respect to a plan . . . in accordance with the documents and instruments governing the plan . . . ." 29 U.S.C. § 1104(a)(1)(D).

Revised Code of Washington § 11.07.010 provides, in pertinent part:

> (1) This section applies to all nonprobate assets, wherever situated, held at the time of entry by a superior court of this state of a decree of dissolution of marriage or a declaration of invalidity.
>
> (2)(a) If a marriage is dissolved or invalidated, a provision made prior to that event that relates to the payment or transfer at death of the decedent's interest in a nonprobate asset in favor of or granting an interest or power to the decedent's former spouse is revoked. A provision affected by this section must be interpreted, and the nonprobate asset affected passes, as if the former spouse failed to survive the decedent, having died at the time of entry of the decree of dissolution or declaration of invalidity.
>
> * * * * *
>
> (5) As used in this section, "nonprobate asset" means those rights and interests of a person having beneficial ownership of an asset that pass on the person's death under only the following written instruments or arrangements other than the decedent's will:
>
> (a) A payable-on-death provision of a life insurance policy, employee benefit plan, annuity or similar contract, or individual retirement account[.]
>
> * * * * *

WASH. REV. CODE § 11.07.010.[1]

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[1] As the court below noted (App., *infra*, 8a n.38), § 11.07.010 has been amended since 1993, the time period at

[Footnote continued on next page]

STATEMENT OF THE CASE

I. Factual Background

Petitioner Donna Rae Egelhoff is the former spouse of David A. Egelhoff. During their marriage, Mr. Egelhoff was employed by The Boeing Company. Boeing provided Mr. Egelhoff certain employee benefits, including a life insurance plan and a pension plan, both of which are governed by ERISA. Mr. Egelhoff designated Petitioner as his beneficiary under both ERISA plans. App., *infra*, 2a-3a.

Mr. Egelhoff and Petitioner were subsequently divorced pursuant to a decree of dissolution entered on April 22, 1994. The decree of dissolution listed the property awarded to Mr. Egelhoff, including "100% of his Boeing retirement 401K and IRA," but did not mention the life insurance plan, nor did it purport to address the rights of beneficiaries of either plan. App., *infra*, 3a; Clerk's Papers (No. 96-2-12626-3) at 65, 67.

Thereafter, Mr. Egelhoff was injured in an automobile accident and ultimately died intestate. At the time of his death, Petitioner remained the designated beneficiary of his life insurance and pension plan benefits. App., *infra*, 4a.

II. Proceedings Below

Respondents, who are Mr. Egelhoff's children from a prior marriage, are his statutory heirs under Washington state law. Respondents brought suit against Petitioner in Washington state court seeking the life insurance and retirement benefits due under the Boeing-sponsored ERISA plans, notwithstanding the fact that

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[Footnote continued from previous page]
issue in this case. The provisions quoted in text, however, are unchanged.

Petitioner was the designated beneficiary of those plans. Respondents' claim of entitlement to those benefits was based on a Washington statute providing that employee benefit plan beneficiary designations made prior to a divorce are "revoked" and that employee benefit plan assets pass upon the employee's death as if the former spouse had predeceased the employee. WASH. REV. CODE § 11.07.010(2)(a) & (5)(a).

After the parties stipulated to the relevant facts (App., *infra*, 2a & n.2), the state trial court granted summary judgment for Petitioner. App., *infra*, 45a-48a. The court held that the Boeing employee benefit plans at issue "should be administered in accordance with [ERISA]" rather than § 11.07.010, and accordingly concluded that Petitioner, as "the designated beneficiary" of David Egelhoff's plans, was entitled to "all legal rights" thereto. App., *infra*, 46a, 48a.

Respondents appealed, and the state court of appeals reversed in a published opinion. App., *infra*, 29a-44a. Noting the trial court's holding "that ERISA preempted state law" (*id.* at 29a (footnote omitted)), the court of appeals expressly rejected that conclusion. The court placed principal reliance upon *Emard v. Hughes Aircraft Co.*, 153 F.3d 949 (9th Cir. 1998), *cert. denied*, 525 U.S. 1122 (1999), in which the Ninth Circuit approved a similar attempt to use state law to override an ERISA plan beneficiary designation. App., *infra*, 37a-42a. The court of appeals concluded that "ERISA does not preempt [§] 11.07.010, a statute similar to the one at issue in *Emard*," and accordingly that Respondents "are entitled to the proceeds" of the pension and insurance plans. *Id.* at 42a.

Petitioner sought review in the Supreme Court of Washington, which affirmed the judgment of the court of appeals. App., *infra*, 1a-28a. The supreme court began its analysis by observing that *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Insurance Co.*, 514 U.S. 645 (1995), had

"signaled a significant retreat from" the previously "expansive reading" of ERISA's preemption provision. App., *infra*, 12a. The court expressed the view that "ERISA's preemptive reach" has been limited to ordinary field and conflict preemption. App., *infra*, 13a-14a (citing *California Div. of Labor Standards Enforcement v. Dillingham Constr., N.A.*, 519 U.S. 316, 336 (1997) (Scalia, J., concurring)).

The supreme court then addressed Respondents' claim of entitlement to the proceeds of David Egelhoff's life insurance plan. App., *infra*, 15a-17a. Noting that the life insurance plan is a "welfare benefit plan" rather than a "pension benefit plan," the court held that the plan is exempt from ERISA's anti-alienation provision, 29 U.S.C. § 1056(d), which requires "pension" plans to "include provisions prohibiting the alienation of 'pension' benefits." App., *infra*, 16a-17a. The court concluded that § 11.07.010 is valid as applied to the life insurance plan and that "Respondents . . . are entitled to the proceeds of [the] employment-based life insurance policy." App., *infra*, 17a (citing *Mackey v. Lanier Collection Agency & Serv., Inc.*, 486 U.S. 825 (1988)).

The supreme court also determined that § 11.07.010 governs the distribution of David Egelhoff's pension plan benefits. App., *infra*, 17a-27a. The court began its analysis of this issue by citing the Ninth Circuit's decision in *Emard* for the proposition that "'ERISA's preemption clause no longer has the power to transmute into a federal question every issue that brushes against the periphery of an ERISA plan.'" App., *infra*, 18a (quoting 153 F.3d at 961). Against that backdrop, the court reasoned that "the mere fact that [§] 11.07.010 may operate upon the beneficiary designation in an ERISA plan is not itself a sufficient connection to require preemption." App., *infra*, 21a.

In its discussion of the *Emard* case, the supreme court conceded that "[t]he Ninth Circuit ERISA preemption analysis currently represents a minority view

among other United States Circuit Courts." App., *infra*, 22a & n.97 (citing conflicting authorities). The court nonetheless "f[ou]nd that decision at least persuasive in interpreting the impact of [§ 11.07.010] in this case." *Id.*

The supreme court also held that there is no conflict between § 11.07.010 and ERISA's anti-alienation provision, which concededly applies to the pension plan. App., *infra*, 17a, 23a-27a. In the court's view, even though the effect of § 11.07.010 is to nullify certain beneficiary designations made in accordance with the terms of ERISA plans, the statute is saved from preemption by the fact that it does not nullify *all* aspects of a particular plan's benefit allocation scheme. *Id.*

Based upon the foregoing analysis, the court held that "[§] 11.07.010 invalidates Petitioner Donna Rae Egelhoff's designation as beneficiary under Decedent David A. Egelhoff's life insurance plan" and that § 11.07.010 is not preempted by ERISA. App., *infra*, 27a. The court accordingly concluded that "Respondents . . . are entitled to receive the benefits under [David Egelhoff's] pension plan and the proceeds of his life insurance." *Id.* at 28a.

III. How The Federal Question Was Presented

Petitioner raised the issue of ERISA preemption at all stages of the proceedings in the state courts. Petitioner specifically sought summary judgment in the trial court on the ground that § 11.07.010 is preempted by ERISA. *See, e.g.*, Petitioner's Mem. of Auth. in Support of Mot. for Summ. J. in No. 96-2-12623-3 at 6 ("Donna Rae Egelhoff is Entitled to Judgment as a Matter of Law Because [§] 11.07.010 is Preempted by ERISA"). The trial court relied on that ground in granting summary judgment for Petitioner. App., *infra*, 46a, 48a (holding that the life insurance and pension plans at issue "should be administered in accordance with [ERISA]" rather than § 11.07.010); *see also id.* at

29a ("[t]he trial court reasoned that ERISA preempted state law") (footnote omitted).

Petitioner expressly raised her ERISA preemption defense in the state appellate courts. App., *infra*, 9a ("Petitioner claims [§] 11.07.010 is preempted by ERISA. She contends the broad preemption provision under 29 U.S.C. § 1144(a) precludes application of the state statute, [§] 11.07.010, to this case."); *id.* at 33a ("Donna argues that ERISA preempts [§] 11.07.010"). As discussed above, moreover, both courts considered and rejected Petitioner's ERISA preemption arguments on the merits. *Id.* at 8a-28a, 35a-43a. Thus, the questions presented in this petition were pressed and passed upon below, and are properly before this Court.

REASONS FOR GRANTING THE WRIT

I. REVIEW IS WARRANTED BECAUSE THE LOWER FEDERAL AND STATE COURTS ARE SHARPLY DIVIDED OVER THE QUESTIONS PRESENTED IN THIS CASE

A. The Decision Below Exacerbates An Existing Conflict Over The Applicability Of ERISA's General Preemption Provision To State Laws Purporting To Override ERISA Plan Beneficiary Designations

ERISA's general preemption provision, 29 U.S.C. § 1144(a), provides that ERISA supersedes all state laws that "relate to" an employee benefit plan. The question whether this provision preempts state laws that nullify or override ERISA plan beneficiary designations has arisen with great frequency and created a sharp division of authority among the lower state and federal appellate courts, resulting in three distinct approaches.

The decision below, declining to find ERISA preemption in these circumstances, adopts the minority position and exacerbates this ever-widening conflict. The Washington Supreme Court held that ERISA does not preempt a state statute that "revoke[s]" upon divorce a valid ERISA beneficiary designation naming an employee's spouse. App., *infra*, 8a, 27a-28a. The court thus permitted state law to override the disposition of ERISA plan benefits mandated by the terms of an ERISA plan.

In reaching its decision, the court below followed the Ninth Circuit's decision in *Emard v. Hughes Aircraft Co.*, which upheld a similar attempt to use state law to override an ERISA plan beneficiary designation. App., *infra*, 22a; *see Emard*, 153 F.3d at 956-61 (applying California's community property statute to override ERISA plan beneficiary designation). Addressing the question "whether ERISA preemption bars application of state law that would require the distribution of ERISA insurance proceeds to a person other than the designated beneficiary," *id.* at 956, the Ninth Circuit "determined that ERISA does not preempt California's law." *Id.* at 961.[2]

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[2] This Court denied certiorari in *Emard* (*see* No. 98-846, *cert. denied*, 525 U.S. 1122 (1999)), but that case did not offer an appropriate vehicle for resolving the questions presented here. In the first place, the Ninth Circuit relied on two alternative state-law grounds for its holding (*i.e.*, community-property law and constructive-trust doctrine, *see* 153 F.3d at 961), but the *Emard* petition challenged only the former ground, *see* Pet. in No. 98-846 at i (Questions Presented). Second, the *Emard* case posed a potential jurisdictional barrier to review of the merits that is absent here, because that case had been removed to federal court in reliance on the doctrine of "complete preemption." *Emard*, 153 F.3d at 953, 961-62. Thus, this Court's review of the

[Footnote continued on next page]

A number of state appellate courts have likewise refused to enforce ERISA preemption in this context. In *Stackhouse v. Russell*, 447 N.W.2d 124 (Iowa 1989), for example, the Supreme Court of Iowa held that application of state law overriding a beneficiary designation was not barred by ERISA preemption. *Id.* at 126; *see also Brown v. Brown*, 422 S.E.2d 375, 379-80 (Va. 1992); *Critchell v. Critchell*, ___ A.2d ___, No. 98-FM-1304, 2000 WL 144364 (D.C. Feb. 10, 2000).

By contrast, however, the majority of courts to consider the issue have reached the opposite conclusion, squarely holding that state laws which purport to override a valid ERISA beneficiary designation are preempted by ERISA. Indeed, in adopting the approach to ERISA preemption enunciated by the Ninth Circuit in *Emard*, the court below recognized that its decision exacerbated the growing conflict on this issue, observing that "[t]he Ninth Circuit ERISA preemption analysis currently represents a minority view among other United States Circuit Courts." App., *infra*, 22a; *see also id.* at 90 n.97 (citing cases).

The Sixth Circuit, for example, has emphatically adopted the majority position, holding repeatedly and in

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questions presented in the *Emard* petition could have been jurisdictionally barred unless the state-law claims at issue in *Emard* were not only preempted by ERISA, but also fell within the narrower category of claims subject to "complete preemption." *See generally Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 63-67 (1987); 14B CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 3722.1 (3d ed. 1998). Finally, the *Emard* petition did not offer an opportunity to resolve the second question presented here, because *Emard* involved solely a welfare benefit plan. This case, by contrast, involves both a pension plan and a welfare benefit plan.

a variety of contexts that ERISA preempts state laws that would assign ERISA plan benefits to someone other than the beneficiary designated in accordance with the terms of the ERISA plan. In *Metropolitan Life Ins. Co. v. Pressley*, 82 F.3d 126, 130 (6th Cir. 1996), the court rejected an attempt to use a state-law divorce decree to invalidate an ERISA plan beneficiary designation, stating that "a designation of beneficiaries has a connection with or reference to an ERISA plan, preempting state law." *Id.* at 129. The court reasoned that, because "ERISA requires that a plan administrator discharge his duties 'in accordance with the documents and instruments governing the plan ....' 29 U.S.C. § 1104 (a)(1)(D)," the designation of beneficiary under the plan must control. *Id.* at 130. Thus, under the Sixth Circuit's analysis, ERISA preemption precludes application of state law that would result in the denial of benefits to a designated beneficiary. *Id.*; *see also Metropolitan Life Ins. Co. v. Marsh*, 119 F.3d 415, 420 (6th Cir. 1997) (same); *McMillan v. Parrott*, 913 F.2d 310, 311 (6th Cir. 1990) (same); *see also Mattei v. Mattei*, 126 F.3d 794, 809 (6th Cir. 1997), *cert. denied*, 523 U.S. 1120 (1998) (outside the limited statutory exception for qualified domestic relations orders, awards of property pursuant to state law "must fall before conflicting designations of ERISA beneficiaries").

The Fourth Circuit has likewise held that ERISA preempts the application of state law that would trump ERISA beneficiary designation forms on file with the plan administrator. *Metropolitan Life Ins. Co. v. Pettit*, 164 F.3d 857, 865 (4th Cir. 1998). The *Pettit* court reasoned that "designating the beneficiary of an ERISA life insurance plan sufficiently relates to a plan to come within the scope of the preemption clause." *Id.* at 862. In addition, the Fourth Circuit in *Pettit*, like the Sixth Circuit in the cases cited above, determined that ERISA requires a plan fiduciary to pay benefits to the person listed on the beneficiary form, based on his statutory duty to "discharge his duties with respect to a plan . . . in

accordance with the documents and instruments governing the plan." *Id.* at 863 (quoting 29 U.S.C. § 1104(a)). Notably, in reaching its decision that state law must yield to ERISA beneficiary designations, the Fourth Circuit expressly rejected the Ninth Circuit's decision in *Emard*, adopting instead the approach enunciated by the Sixth Circuit in *Marsh*. *Id.* at 865 n.8.

Similarly, the Second Circuit has held that ERISA prevents the use of state law to override an ERISA plan beneficiary designation. In *Krishna v. Colgate Palmolive Co.*, 7 F.3d 11 (2d Cir. 1993), the court agreed with the majority view that, "[b]ecause the designation of beneficiaries to [a] life insurance policy 'relates to' the ERISA plan, the preemption provision applies." *Id.* at 15 (citation omitted).

The Tenth Circuit has also ruled in favor of preemption, rejecting a contention that ERISA plan assets should pass via state law rather than in accordance with a valid beneficiary designation form. *Metropolitan Life Ins. Co. v. Hanslip*, 939 F.2d 904, 906 (10th Cir. 1991). In so deciding, the court barred application of an Oklahoma statute that, like the Washington statute at issue here, automatically "revoked" the beneficiary designation of a former spouse upon divorce. *Id.* A number of other courts have likewise held that state laws purporting to alter the determination of a plan's beneficiary are preempted by ERISA. *See, e.g., Brown v. Connecticut Gen. Life Ins. Co.*, 934 F.2d 1193, 1195 (11th Cir. 1991); *MacLean v. Ford Motor Co.*, 831 F.2d 723, 728 (7th Cir. 1987) ("When, as here, the terms of an employee pension plan under ERISA provide a valid method for determining the beneficiary, that mechanism cannot be displaced by the provisions of [state law].").

In addition to the two lines of authority discussed above, a number of appellate courts have adopted yet a third approach to the resolution of the questions at issue here. These courts have agreed with the majority view that ERISA preempts state laws purporting to alter

beneficiary designations, but have then held that federal common law (rather than ERISA itself) governs the determination whether the plan beneficiary designation form controls the award of plan benefits. The Eighth Circuit, for example, has held that "ERISA preemption makes the designation of plan beneficiaries and the determination of who is entitled to plan benefits questions of federal law." *Equitable Life Assurance Soc'y of the United States v. Crysler*, 66 F.3d 944, 948 (8th Cir. 1995). But having recognized the preemptive force of ERISA in this context, the court then held that federal common law controlled, and that "the federal common law to be applied is . . . the relevant state law." *Id.* at 949. Accordingly, the net result of the Eighth Circuit's approach is that "state insurance and family law principles" are allowed to override ERISA plan beneficiary designations. *Id.* at 950.

The Fifth Circuit has adopted this approach as well. In *Brandon v. Travelers Ins. Co.*, 18 F.3d 1321 (5th Cir. 1994), the court adopted the majority rule that "the designation of a beneficiary 'relates to' the provision of an ERISA plan to a sufficient degree to be preempted by that statute." *Id.* at 1325. The *Brandon* court accordingly concluded that ERISA preempted a Texas statute providing that "a life insurance plan participant must redesignate an ex-spouse after divorce in order to maintain that ex-spouse as the designated beneficiary." *Id.* at 1323, 1324-25. After finding the state law preempted, however, the court proceeded to apply "federal common law," which it ascertained by borrowing a modified version of the preempted Texas statute. *Id.* at 1326. In adopting this approach, the *Brandon* court expressly recognized the existence of a circuit conflict on this issue: "Courts that have faced the issues presented by this case have split as to whether ERISA itself supplies the rule of law or whether judges must look to federal common law for the controlling principles." *Id.* at 1325; *accord, e.g., Pressley*, 82 F.3d at 129.

The Seventh Circuit has also adopted the federal-common-law approach to resolution of this issue. *See, e.g., Fox Valley & Vicinity Constr. Workers Pension Fund v. Brown*, 897 F.2d 275, 278 (7th Cir. 1989) (en banc) ("[b]ecause ERISA preempts state . . . laws, . . . we must find the answer to [the question whether the ERISA beneficiary form controls the award of plan benefits] within ERISA itself or in the federal common law interpreting ERISA" and applying federal common law).

Thus, the state and federal appellate courts are sharply divided over the proper resolution of the first question presented in this petition, with each of the three conflicting legal rules enjoying the support of several jurisdictions. The need for this Court's review is compelling and immediate.

Both the court below and the Ninth Circuit acknowledged that their no-preemption approach to this issue represents a minority view (App., *infra*, 22a; *Emard*, 153 F.3d at 956), but suggested that this Court's decision in *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645 (1995), modified the law of ERISA preemption such that current doctrine requires a different result from that adopted by the majority of the circuits. App., *infra*, 12a-15a, 17a-18a, 22a-24a, 27a; *Emard*, 153 F.3d at 957. The *Travelers* Court held that in determining the scope of ERISA preemption, courts must look to "the objectives of the ERISA statute as a guide to the scope of the state law that Congress understood would survive." 514 U.S. at 656.

Contrary to the suggestions of the Ninth Circuit and the court below, however, *Travelers* and its progeny do not undermine the propriety of ERISA preemption in circumstances like those presented here, where the application of state law would nullify the allocation of plan benefits mandated by a beneficiary designation made in accordance with the terms of an ERISA plan.

Indeed, as noted above, numerous courts have found similar state laws preempted by ERISA in the aftermath of *Travelers* and its progeny, thus reaffirming the existence of a circuit conflict on this issue. The Sixth Circuit, for example, has issued several post-*Travelers* decisions holding that ERISA preempts state laws that purport to alter the designated recipient of ERISA plan benefits. *Pressley*, 82 F.3d at 130; *Marsh*, 119 F.3d at 420 (citing *Boggs v. Boggs*, 520 U.S. 833 (1997)); *Mattei*, 126 F.3d at 809. Similarly, the Fourth Circuit has expressly rejected the approach enunciated in *Emard* and followed by the court below. *Pettit*, 164 F.3d at 861-65 (citing *Travelers*, 514 U.S. 645).

Moreover, as Circuit Judge Hall noted in her dissenting opinion in *Emard*, *Travelers* and its progeny simply have no application in the circumstances of this case. As she explained, the cases adopting the majority view "might be distinguishable in light of recent Supreme Court precedent *if* the courts had simply speculated that state laws that alter beneficiary designations 'relate to' ERISA in some intangible fashion. However, the conflict between such state laws and ERISA is much more tangible and direct." *Emard*, 153 F.3d at 962 (Hall, J., concurring in part and dissenting in part).

Thus, it is clear that *Travelers* has not resolved the preexisting conflict over ERISA preemption of state laws that override ERISA plan beneficiary designations. To the contrary, that conflict has instead continued to widen. The division of authority among the lower state and federal courts on this issue is stark and widespread, and the passage of time will serve only to exacerbate this confusion and disagreement still further. Accordingly, this issue is ripe for resolution now.

B. The Decision Below Conflicts With Numerous Court Of Appeals Decisions Holding That State Laws Attempting To Regulate The Allocation Of Pension Plan Benefits Are Preempted By ERISA's Anti-Alienation Provision

Courts have likewise split over the interpretation of ERISA's anti-alienation provision, 29 U.S.C. § 1056 (d)(1), and its effect on attempted state law transfers of a named beneficiary's pension plan proceeds. The anti-alienation clause is a "spendthrift" provision, which provides that pension plan benefits "may not be assigned or alienated." 29 U.S.C. § 1056(d)(1). The provision applies only to pension plans, not welfare benefit plans, *Mackey v. Lanier Collection Agency & Serv.*, 486 U.S. 825, 837 (1988), and is designed to protect the interests of employees and their designated beneficiaries by preventing the diversion of "undistributed pension benefits, which are intended to provide a stream of income to participants and their beneficiaries." *Boggs*, 520 U.S. at 852. ERISA provides a limited exception to this anti-alienation provision for "qualified domestic relations orders ['QDROs']" (29 U.S.C. § 1056 (d)(3)(A)), and exempts them from ERISA's general preemption provision. 29 U.S.C. § 1144(b)(7).[3]

Most appellate courts that have considered the question interpret the anti-alienation provision to invalidate any attempt to use state law to change the allocation of ERISA pension plan proceeds, unless accomplished through a QDRO. As the Fourth Circuit

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[3] To be "qualified" as a QDRO, a state domestic relations order must meet certain statutory procedural requirements. 29 U.S.C. § 1056(d)(3)(A), (C) & (D). The court below did not hold or suggest that the divorce dissolving Petitioner's marriage with David Egelhoff constituted a QDRO.

explained in *Pettit*, ERISA "specifies how [] an alienation or assignment should be accomplished in the domestic relations context—through a QDRO." *Pettit*, 164 F.3d at 864. Thus, ERISA's preemption clause bars state law "from attaching ERISA plan benefits . . . if it did not qualify as a QDRO." *Id.* at 864 n.7. To hold otherwise, the court reasoned, "effectively would read the preemption provision exception . . . and the referenced QDRO provision . . . out of existence, thus violating a fundamental precept of statutory interpretation." *Id.* at 865 (citing *Travelers*, 514 U.S. at 659-62).

Similarly, the Ninth Circuit has held that ERISA's anti-alienation provision preempts a state law that would otherwise permit the alienation of a nonparticipant spouse's portion of pension plan benefits other than through a QDRO. *Ablamis v. Roper*, 937 F.2d 1450, 1458-59 (9th Cir. 1991). The Court in *Ablamis* reasoned that the attempted transfer pusuant to state law was a prohibited alienation under ERISA because it did not fit within the QDRO exception. *Id.* at 1455-56.[4]

The Sixth Circuit has similarly held that "[w]here there is no QDRO . . . awards of property pursuant to [state law] must fall before conflicting designations of ERISA beneficiaries." *Mattei*, 126 F.3d at 809; *Marsh*, 119 F.3d at 420-21 (same). The Seventh Circuit supports this view as well. *Fox Valley*, 897 F.2d at 279

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[4] In *Emard*, the Ninth Circuit found *Ablamis* inapplicable because the latter case involved a pension plan subject to the anti-alienation provision, whereas the plan at issue in *Emard* was a welfare benefit plan to which the anti-alienation provision did not apply. *Emard*, 153 F.3d at 956 n.9. As noted above, this case involves *both* a pension plan *and* a welfare benefit plan, and thus provides an opportunity to address both issues at once.

("ERISA preempts any attempt to alienate or assign [pension plan] benefits by a domestic relations order if that order is not a QDRO."); *see also id.* at 283 (Easterbrook, J., dissenting) (noting that application of state law altering a pension plan beneficiary designation "would not be valid given the spendthrift clause in ERISA . . . [which] bars the assignment of 'benefits'—that is, payments under the plan—without regard to the identity of the person making that assignment.").

The decision below is squarely inconsistent with all of the authorities cited above. The court below held that § 11.07.010 was not preempted by ERISA's anti-alienation provision even with respect to the pension plan. App., *infra*, 23a-26a. The court reasoned that § 11.07.010—which "revoked" upon divorce a former spouse's status as a named beneficiary, thereby assigning to other individuals the right to receive plan benefits—did not run afoul of ERISA's anti-alienation provision because the law "does not operate to divert benefit plan proceeds from distribution under terms of the plan documents." *Id.* at 25a. The court reasoned that the state law "does not require distribution of benefit plan assets to a third party, nor does it in any way direct payment of proceeds. It merely invalidates designation of a former spouse as beneficiary of a non-probate asset by creating the legal fiction that the spouse predeceased the now-deceased owner." *Id.* at 25a-26a. In short, even though § 11.07.010 would effectively transfer ERISA pension plan benefits from the designated beneficiary to other individuals, the court concluded that the law does not divert plan proceeds so as to conflict with ERISA's anti-alienation clause.

Because the decision below is in sharp conflict with the federal court of appeals decisions cited above on the issue of the proper application of ERISA's anti-alienation provision to state laws effecting transfers of pension plan benefits, this issue is likewise ripe for disposition by this Court.

II. REVIEW IS WARRANTED BECAUSE THE DECISION BELOW CONFLICTS WITH THIS COURT'S PRECEDENTS

The decision below is also inconsistent with this Court's precedents, including *Boggs v. Boggs*, 520 U.S. 833 (1997). *Boggs* held that ERISA preempts state law that would allow a non-participant spouse to transfer an interest in pension benefits by testamentary instrument. *Id.* at 854. More specifically, the Court concluded that ERISA's anti-alienation provision prohibited an attempt by a plan participant's spouse to transfer by testamentary instrument to her children her community property interest in the participant's pension plans. *Id.* at 851. In addition, the *Boggs* Court held that ERISA preempted the children's "nonbeneficiary, nonparticipant interests" in the pension plans. *Id.* Applying *Boggs*' preemption analysis to the facts in *Egelhoff* leads inexorably to the conclusion that ERISA likewise preempts § 11.07.010.

First, the court below erred in concluding that ERISA's anti-alienation clause, 29 U.S.C. § 1056(d)(1), can coexist with state laws that purport to nullify ERISA plan beneficiary designations. "Statutory anti-alienation provisions are potent mechanisms to prevent the dissipation of funds." *Boggs*, 520 U.S. at 851. Under *Boggs*, § 11.07.010's nullification of a divorced spouse's status as a designated beneficiary and the resulting grant of pension plan benefits to persons other than the designated beneficiary plainly operates as an "assignment or alienation" of pension plan benefits, in violation of ERISA's spendthrift clause.[5] As the *Boggs*

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[5] An "assignment or alienation" includes "'[a]ny direct or indirect arrangement whereby a party acquires from a participant or beneficiary' an interest enforceable against a plan to 'all or any part of a plan benefit payment, which is, or

[Footnote continued on next page]

Court explained, ERISA's prohibition of alienation "is mandatory and contains only two explicit exceptions, *see* §§ 1056(d)(2) [plan loans], (d)(3)(A) [QDROs], which are not subject to judicial expansion." *Boggs*, 520 U.S. at 851. Because § 11.07.010 is neither a QDRO nor a plan loan, the exceptions do not apply, and the anti-alienation provision bars the attempted statutory alienation of plan benefits. *Id.*

The court below reasoned that § 11.07.010 "does not operate to divert benefit plan proceeds," but "merely invalidates designation of a former spouse as beneficiary . . . by creating [a] legal fiction." App., *infra*, 25a-26a. The *Boggs* Court expressly rejected a similar claim, holding that where an ERISA provision—in that case, both the anti-alienation provision and ERISA's surviving spouse annuity provision—requires that a particular party receive plan benefits, state law may not be used to prevent that party from receiving the benefits. The children in *Boggs* argued that ERISA's surviving spouse annuity provision, which required the payment of benefits to a nonparticipant surviving spouse, was not implicated by a surviving spouse's purported state-law obligation to pay plan proceeds to a competing claimant after she had received the benefits, because the latter obligation involved merely the "disposition of plan proceeds after . . . disburse[ment]." *Boggs*, 520 U.S. at 842. The Court rejected this claim, explaining that it would contradict the purpose of ERISA's survivor's annuity provision, which was to "ensure a stream of income to surviving spouses." *Id.* at 843.

[Footnote continued from previous page]
may become, payable to the participant or beneficiary.'" *Boggs*, 520 U.S. at 851 (quoting 26 C.F.R. § 1.401(a)-13(c)(1)(ii)).

Likewise, the Court noted that ERISA's anti-alienation provision is intended to "provide a stream of income to participants and their beneficiaries." *Id.* at 852. Thus, the fact that § 11.07.010 would alienate a beneficiary's interests via a "legal fiction" does not alter the reality that the pension proceeds would be diverted and the purpose of the anti-alienation provision defeated. As the Court stated in *Boggs*, "It would be inimical to ERISA's purposes to permit [third party] recipients to acquire a competing interest in undistributed pension benefits, which are intended to provide a stream of income to participants and their beneficiaries." *Id.* "In the face of this direct clash between state law and the provisions and objectives of ERISA, the state law cannot stand." *Id.* at 844.

Second, the conclusion that ERISA's spendthrift provision bars application of § 11.07.010 is supported by the *Boggs* Court's analysis of ERISA's "principal object" of "protect[ing] plan participants and beneficiaries." *Id.* at 845.[6] "The axis around which ERISA's protections revolve is the concept[] of participant and beneficiary." *Id.* at 854. By contrast, ERISA confers beneficiary status on a nonparticipant spouse or dependent only in "narrow circumstances delineated by its provisions," such as in the cases of a QDRO and surviving spouse annuity. *Id.* at 846. The *Boggs* Court noted that Congress's enactment of these narrow provisions protecting specific interests of spouses and children indicates that other claims "are not consistent with the statutory scheme." *Id.* at 847. The Court then held that

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[6] *See also id.* at 845-46 (noting that a plan fiduciary's responsibilities run only to participants and beneficiaries and that the plan assets are held exclusively to provide benefits to participants and beneficiaries and to cover reasonable administrative costs.).

Congress intended to preempt the children's interests in the retirement plans because the children were neither participants nor beneficiaries, and their claims were based on their mother's "attempted testamentary transfer, not on a designation by [the plan participant] or under the terms of the retirement plans." *Id.* at 848. Likewise, in this case, Respondents were neither participants nor beneficiaries under the ERISA plans. Rather, their claim to plan benefits is dependent on the operation of state law purporting to oust the designated beneficiary. As the *Boggs* Court's analysis makes clear, a state law attempting to nullify the rights of a designated plan *beneficiary* in favor of a *nonbeneficiary, nonparticipant* cannot withstand scrutiny. *Id.* at 850-51.

In addition, the decision below is inconsistent with a host of this Court's other ERISA preemption cases, including *Travelers*, in which the Court held that ERISA preempts state laws that "mandate employee benefit structures or their administration." 514 U.S. at 658. By overriding the provisions of the ERISA plans at issue here and effectively directing ERISA plan administrators and fiduciaries to dispense benefits in a manner other than (and directly contrary to) the distribution scheme mandated by the terms of the plan, § 11.07.010 plainly runs afoul of this principle. Indeed, the United States Secretary of Labor made precisely this point in her submission to the court below. *See* Secretary of Labor's Brief as Amicus Curiae in Support of Petitioners at 17-18 (Aug. 13, 1999) ("Secretary of Labor's Brief"), *reprinted at* App., *infra*, 59a-60a ("A state law that requires a plan to pay benefits in a manner contrary to the directives of the plan clearly affects and relates to that plan's administration. Such a law mandates the plan's administration in the manner in which *Travelers* instructs is prohibited by ERISA's preemption provision.").

The decision below is also inconsistent with this Court's precedent because § 11.07.010 would frustrate

the objectives of ERISA "to permit the nationally uniform administration of employee benefit plans." *Travelers*, 514 U.S. at 657. As the Court in *Boggs* explained, if state law were permitted to "result[] in a complex set of requirements varying from State to State . . . [this] result [would not] accord[] with [ERISA's] statutory scheme." *Boggs*, 520 U.S. at 851; *see also id.* at 842 (discussing "ERISA's concern for securing national uniformity in the administration of employee benefit plans"). As the Secretary of Labor argued persuasively in the court below, allowing state law to trump beneficiary designation forms on file with the plan administrator would "subject plans to a multiplicity of regulation varying with each state and prevent the nationally uniform administration of employee benefit plans that ERISA intended." Secretary of Labor's Brief at 2, *reprinted at* App., *infra*, 50a. In sum, the Washington Supreme Court's holding below—that ERISA did not preempt the Washington statute's attempt to "revoke" an otherwise valid ERISA plan beneficiary designation—is inconsistent with this Court's precedent, and certiorari is therefore warranted.

III. THE QUESTIONS PRESENTED IN THIS PETITION ARE OF RECURRING AND SUBSTANTIAL IMPORTANCE

The question whether ERISA preempts state laws mandating the payment of plan benefits to someone other than a named beneficiary is an important and recurring issue facing ERISA plans, administrators, fiduciaries, employees, beneficiaries and claimants across the country. In enacting ERISA, Congress emphasized the pervasive significance of employee benefit plans in our nation's economy:

> [T]he growth in size, scope, and numbers of employee benefit plans in recent years has been rapid and substantial; . . . the continued well being and security of millions of employees and their dependents are directly affected by these plans; . . . they are affected

> with a national public interest [and] they have become an important factor affecting the stability of employment and the successful development of industrial relations . . . .

29 U.S.C. § 1001(a).

This Court has repeatedly recognized the importance of ERISA, as well as the increasing volume and significance of ERISA preemption questions: "ERISA pre-emption cases reflect[] the comprehensive nature of the statute, the centrality of pension and welfare plans in the national economy, and their importance to the financial security of the Nation's work force." *Boggs*, 520 U.S. at 839; *see also id.* at 836 (stating that the ERISA preemption question is "of undoubted importance"); *De Buono v. NYSA-ILA Medical and Clinical Servs. Fund*, 520 U.S. 806, 808 n.1 (1997) ("The boundaries of ERISA's pre-emptive reach have been the focus of considerable attention from this Court. This case is one of three addressing the issue this Term. And in the 16 years since we first took up the question, we have decided no fewer than 13 cases. The issue has also generated an avalanche of litigation in the lower courts.") (citations omitted).

As the large number of appellate decisions cited above attests, the questions presented in this petition arise with great frequency in both state and federal courts. In a variety of ways—whether through statutes like § 11.07.010,[7] state-law divorce decrees, testamentary transfer law, community property law, or the law of

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[7] *See, e.g.*, MONT. CODE ANN. § 72-2-814 (revoking designations of former spouses as beneficiaries of life insurance and pension plans); OHIO REV. CODE ANN. § 1339.63 (same); OKLA. STAT. tit. 15, § 178 (same); PA. CONS. STAT. § 6111.2 (same).

constructive trusts—numerous states have sought to impose varying and inconsistent restrictions on the ability of ERISA plan participants to designate beneficiaries in accordance with the applicable ERISA plans. *See Brandon*, 18 F.3d at 1324 (observing that the circumstances "presented by the facts of the present case have been confronted with surprising frequency by a variety of our sister circuits").

The problem created by the widening circuit conflict at issue in this case is particularly acute for sponsors and administrators of multiemployer plans with participants in multiple states across the country. The widespread disagreement among the lower courts compels these entities to administer their plans differently in different jurisdictions, contrary to Congress's intent in enacting ERISA's preemption clause. "The basic thrust of the pre-emption clause [] was to avoid a multiplicity of regulation in order to permit the nationally uniform administration of employee benefit plans." *Travelers*, 514 U.S. at 657. ERISA preemption seeks to ensure that plan sponsors and administrators are subject to uniform regulation of employee benefit plans in each of the 50 States without the administrative and financial burden of complying with a hodgepodge of differing and inconsistent state and local regulations. "[T]he goal was to minimize the administrative and financial burden of complying with conflicting directives among States or between the States and the Federal Government . . . [and to prevent] the potential for conflict in substantive law . . . requiring the tailoring of plans and employer conduct to the particularities of the law of each jurisdiction." *Id.* at 656-57 (citation omitted).

In those jurisdictions that allow ERISA plans to pay benefits by looking only to the terms of the plan and the valid beneficiary designation forms on file, the determination and payment of the correct beneficiaries can proceed efficiently in the normal course of business. Thus, ERISA's express requirement that benefit plans be

administered in accordance with the governing plan documents (*e.g.*, 29 U.S.C. §§ 1104(a)(1)(D), 1132(a)) leads to the uniform and cost-effective administration of plans intended by Congress.

By contrast, in those jurisdictions permitting state law to override plan beneficiary designations, entities that sponsor and administer ERISA plans must face the administrative and financial burden of researching, complying with, and potentially litigating over the validity and interpretation of state laws that purport to override such beneficiary designations. In addition, ERISA plans are threatened with the substantial risk that they may find themselves paying the same benefits twice, once to a beneficiary designated under the plan and a second time to a different recipient designated by state law.[8] Similarly, plans and others may face liability under ERISA for failure to comply with the terms of the applicable plan or for breach of fiduciary duty if they administer the plan in accordance with the state statute rather than the governing plan documents. 29 U.S.C. §§ 1104(a)(1)(D), 1132(a).

All of these problems stem from the fact that permitting state law to affect plan beneficiary designations undermines "'the intent of Congress that ERISA plans be uniform in their interpretation and simple in their application.'" *Emard*, 153 F.3d at 963 (Hall, J., concurring in part and dissenting in part) (quoting *McMillan*, 913 F.2d at 312). As Judge Hall recognized in her *Emard* dissent, "Requiring plan administrators to look not only to formal beneficiary designations, but also to state law, before disbursing benefits would undermine the efficient functioning of ERISA plans and the certainty of both plan administrators and designated beneficiaries as to who is entitled to benefits." 153 F.3d at 963 (Hall, J., concurring in part and dissenting in part).

The Second Circuit has likewise recognized that "[t]here is a strong interest in uniform, uncomplicated administration of ERISA plans, many of which function in a number of states," and that "[i]t would be counterproductive to compel the Policy administrator to look beyond those designations into varying state laws regarding wills, trusts and estates, or domestic relations to determine the proper beneficiaries of Policy distributions." *Krishna*, 7 F.3d at 16; *see also Pettit*, 164 F.3d at 863-64; *McMillan*, 913 F.2d at 312. In short, as the Secretary of Labor cogently observed in her submission below, the compelling interest of ERISA plans "in avoiding a multiplicity of conflicting state regulation is also implicated [in this case] and requires preemption." App., *infra*, 57a.

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[8] Indeed, this case provides a perfect illustration of that risk. The administrator of David Egelhoff's life insurance plan distributed the plan benefits to Petitioner in accordance with the valid beneficiary designation form on file with the plan. Respondents have now brought suit against the administrator, seeking to compel it to pay them the full amount of the life insurance benefits as well. *Egelhoff v. Aetna Life Ins. Co.*, No. 99-2-08735-1 (Wash. Super. Ct., Pierce County, filed June 17, 1999).

CONCLUSION

The existing conflict among the lower state and federal appellate courts poses a serious and recurring problem in the administration of ERISA plans, which is currently ripe for resolution by this Court. For all of the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted.

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March 16, 2000

APPENDIX

APPENDIX A

IN THE MATTER OF THE ESTATE OF DAVID A. EGELHOFF, DECEASED; SAMANTHA EGELHOFF, a minor by and through her natural parent Kate Breiner; and DAVID EGELHOFF, a single person,
Respondents,

v.

Donna Rae Egelhoff and John Doe Egelhoff, wife and husband,
Petitioners.

No. 67626-7.

Supreme Court of Washington,
En Banc.

Argued Oct. 14, 1999.

Decided Nov. 18, 1999.

* * * * *

SMITH, J.

Petitioner Donna Rae Egelhoff, recently divorced former spouse of Decedent David A. Egelhoff, seeks review of a decision of the Court of Appeals, Division II, which reversed orders of summary judgment granted by the Pierce County Superior Court in her favor in an action by Respondents, Samantha Egelhoff and David Egelhoff (David A. Egelhoff, Jr.), children of decedent

from a prior marriage.[1] The Court of Appeals reasoned the children of decedent were entitled to the benefits of decedent's pension plan and employment-based life insurance policy under RCW 11.07.010, and that the federal Employee Retirement Income Security Act (ERISA), 29 U.S.C. §§ 1001-1461, did not preempt a state statute which revoked entitlement of a former spouse to life insurance proceeds and pension plan benefits upon dissolution of a marriage. We affirm.

QUESTION PRESENTED

The question presented in this case is whether under RCW 11.07.010 Decedent David A. Egelhoff's designation during their marriage of his then-spouse, Donna Rae Egelhoff, as beneficiary of his pension plan and employment-based life insurance policy was revoked upon dissolution of their marriage and whether any disposition under the insurance policy and pension plan is preempted by ERISA.

STATEMENT OF FACTS

The facts in this case are stipulated.[2] Decedent David A. Egelhoff and Donna Rae Egelhoff were married on November 4, 1988 in Tacoma, Washington.[3] They separated on October 1, 1993.[4]

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[1] The caption of the case illogically refers to Petitioners as "Donna Rae Egelhoff and John Doe Egelhoff, wife and husband." The Estate of David A. Egelhoff declined to participate in this appeal.

[2] Pet. for Review to Washington State Supreme Court of Court of Appeals Decision Terminating Review, filed Jan. 27, 1999, at 1-5; *see also* Clerk's Papers (No. 96-2-12626-3) at 122-24.

[3] Pet. for Review at 1.

[4] *Id.* at 2.

During their four and one-half year marriage, Decedent David A. Egelhoff designated Donna Rae Egelhoff as beneficiary under his Disability and Life Insurance Plan[5] and his Defined Contribution Profit Sharing Plan,[6] jointly provided by him and his employer, the Boeing Company.[7]

The parties stipulated that ERISA governs administration of David A. Egelhoff's Boeing life insurance policy and pension plan. Petitioner Donna Rae Egelhoff filed a *pro se* petition for dissolution of marriage in the Pierce County Superior Court on December 30, 1993.[8] A decree of dissolution was entered on April 20, 1994.[9] In a document incorporated in the decree,[10] David A. Egelhoff was awarded "100% of his Boeing retirement 401K and IRA."[11]

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[5] Clerk's Papers (No. 96-2-12626-3) at 100-14. (An incomplete "summary" of the Boeing Company's Disability and Life Insurance Plan is included in the record).

[6] Clerk's Papers (No. 94-4-01619-1) at 38-52. The Boeing Company's employee "pension plan" is also referred to as a Voluntary Investment Plan.

[7] Pet. for Review at 2-5.

[8] Clerk's Papers at 87 (No. 94-4-01619-1).

[9] Clerk's Papers (No. 96-2-12626-3) at 61-69. David A. Egelhoff and Donna Rae Egelhoff agreed on Findings of Fact and Conclusions of Law, incorporating Exhibits "A" and "B." Exhibit "A" identifies property awarded to David A. Egelhoff and Donna Rae Egelhoff individually, while Exhibit "B" identifies liabilities of each party.

[10] *Id.* (Exhibit "A") at 67.

[11] *See* 26 U.S.C. § 401(k) and 26 U.S.C. § 408(a) (Definitions of "401K" and "IRA").

On June 23, 1994, two months after the dissolution, Decedent David A. Egelhoff was injured in an automobile accident.[12] He died from his injuries on July 8, 1994.[13] He died intestate.[14] At the time of his death, Donna Rae Egelhoff remained beneficiary of record under both his life insurance policy and his pension plan.[15] Decedent was paying court ordered child support at the time of his death.[16]

The proceeds of Decedent David A. Egelhoff's life insurance plan, totaling $46,000.00, were paid to his former spouse, Petitioner Donna Rae Egelhoff, on August 3, 1994.[17] On November 15, 1996, decedent's statutory heirs,[18] Samantha Egelhoff, a minor, and

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12 Clerk's Papers (No. 96-2-12626-3) at 27.

13 *Id.*

14 Pet. for Review at 2.

15 *Id.* at 3-6

16 *Id.*

17 Clerk's Papers (No. 96-2-12626-3) at 95-97.

18 *See* RCW 11.04.015, which provides in pertinent part:

> **"11.04.015 Descent and distribution of real and personal estate.** The net estate of a person dying intestate, or that portion thereof with respect to which the person shall have died intestate, shall descend subject to the provisions of RCW 11.04.250 and 11.02.070, and shall be distributed as follows:
>
> ". . . .
>
> "(2) Shares of others than surviving spouse. The share of the net estate not distributable to the surviving spouse, or the entire net estate if there is no surviving spouse, shall descend and be distributed as follows:

[Footnote continued on next page]

David Egelhoff, children from his first marriage to Kate Breiner,[19] filed a complaint against Donna Rae Egelhoff in the Pierce County Superior Court to recover the proceeds of their father's life insurance which had been paid to her.[20] She filed her answer on August 6, 1997, asserting the heirs' claims are preempted by ERISA, 29 U.S.C. § 1144(a).[21] She then filed a motion for summary judgment on August 27, 1997.[22] The heirs, relying upon RCW 11.07.010, opposed the motion, arguing that Washington law revoked Petitioner's designation as beneficiary under the life insurance plan.[23]

On October 10, 1997, the Pierce County Superior Court, the Honorable Frederick B. Hayes, granted summary judgment in favor of Petitioner Donna Rae Egelhoff.[24] The Court concluded that David A. Egelhoff's life insurance plan "should be administered in accor-

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[Footnote continued from previous page]

> "(a) To the issue of the intestate; if they are all in the same degree of kinship to the intestate, they shall take equally, or if of unequal degree, then those of more remote degree shall take by representation.
>
> ". . . .

19 Pet. for Review at 2.

20 Clerk's Papers (No. 96-2-12626-3) at 1-5.

21 *Id.* at 6-10.

22 *Id.* at 11-12.

23 *Id.* at 13-26. (The heirs also submitted to the trial court a certified statement of Kate Breiner purporting to establish that "D[onna] E[gelhoff] knew that D[avid] E[gelhoff] intended to remove her as beneficiary and that it was the apparent agreement of D[onna] E[gelhoff] and the decedent.")

24 *Id.* at 42-44.

dance with the Employment Retirement Income Security Act and the designated beneficiary, Donna Rae Egelhoff shall have all legal rights to the proceeds which have been paid thereto."[25]

On May 30, 1997, while asserting a claim to their father's life insurance proceeds, the heirs also moved for summary judgment to recover his pension plan benefits then held by Boeing.[26] The Boeing Company's employee pension plan provided that the children of the deceased become beneficiaries if the proceeds do not pass to the named beneficiary and there is no surviving spouse.[27] Respondents claimed that under the property distribution incorporated in the dissolution decree Petitioner Donna Rae Egelhoff waived her right to benefits under their father's pension plan.[28]

On August 8, 1997, the Pierce County Superior Court, the Honorable Karen L. Strombom, ordered that the pension plan benefits "should be administered in accordance with the Employment Retirement Income Security Act of 1974 ('ERISA') and that the designated beneficiary, Donna Rae Egelhoff shall have all rights thereto[.]"[29] In addition, the Court stayed the order for summary judgment on August 15, 1997 and directed that pension plan benefits not be distributed to any party pending outcome of the case on appeal.[30]

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25 *Id.* at 43.

26 Clerk's Papers (No. 94-4-01619-1) at 1-2.

27 *Id.* at 45.

28 Respondents valued their father's pension plan benefits on May 28, 1997 at $35,000.00, subject to federal taxes. *Id.* at 6-22.

29 *Id.* at 115.

30 *Id.* at 117-18

Respondents, the statutory heirs, on August 15, 1997 filed in the Court of Appeals, Division II, an appeal of the order disposing of their father's *pension plan benefits*.[31] On October 22, 1997, they filed an appeal of the order disposing of their father's *life insurance benefits*.[32] The Court of Appeals on November 13, 1997 granted their motion for consolidation of both cases.[33] On December 23, 1998, the Court of Appeals, Division II, the Honorable J. Robin Hunt writing, reversed the summary judgments of the Pierce County Superior Court, concluding that RCW 11.07.010 was not preempted by ERISA.[34] The Court determined the children of Decedent David A. Egelhoff were entitled to the benefits of his pension plan and employment-based life insurance under that statute.[35] The Court reasoned the Washington statute did not have a "reference to" nor a "connection with" the ERISA plan, and did not significantly affect administration of the plan,[36] thus lawfully invalidating designation of the former spouse, Donna Rae Egelhoff as beneficiary on any nonprobate asset held by ERISA plan participant Decedent David A. Egelhoff at the time of dissolution of their marriage.

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31 *Id.* at 120.

32 Notice of Appeal to Court of Appeals, Division II (No. 96-2-12626-3) filed Oct. 22, 1997.

33 Letter of the Clerk of the Court of Appeals, Division II, dated Nov. 13, 1997.

34 *In re Estate of Egelhoff*, 93 Wash.App. 314, 968 P.2d 924 (1998), *review granted*, 137 Wash.2d 1032, 980 P.2d 1283 (1999).

35 *Id.* at 327, 968 P.2d 924.

36 *Id.* at 324-25, 968 P.2d 924.

Petitioner Donna Rae Egelhoff petitioned this Court for review which was granted on June 1, 1999.[37]

DISCUSSION

Prior RCW 11.07.010 provided:[38]

(1) This section applies to all nonprobate assets, wherever situated, held at the time of entry by a superior court of this state of a decree of dissolution of marriage or a declaration of invalidity.

(2)(a) If a marriage is dissolved or invalidated, a provision made prior to that event that relates to the payment or transfer at death of the decedent's interest in a nonprobate asset in favor of or granting an interest or power to the decedent's former spouse is revoked. A provision affected by this section must be interpreted, and the nonprobate asset affected passes, as if the former spouse failed to survive the decedent, having died at the time of entry of the decree of dissolution or declaration of invalidity.

. . . .

(5) As used in this section, "nonprobate asset" means those rights and interests of a person having beneficial ownership of an asset that pass on the person's death under only the following written instruments or arrangements other than the decedent's will:

(a) A payable-on-death provision of a life insurance policy, employee benefit plan, annuity or similar contract, or individual retirement account[.]

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37 Order Granting Pet. for review (No. 67626-7) dated June 1, 1999.

38 Laws of 1993, ch. 236, § 1 (emphasis added). The statute was amended in 1994 and 1997, but the amendments are not relevant to this case.

. . . .

(Emphasis added).

Petitioner claims RCW 11.07.010 is preempted by ERISA. She contends the broad preemption provision under 29 U.S.C. § 1144(a) precludes application of the state statute, RCW 11.07.010, to this case. Respondents argue, to the contrary, that RCW 11.07.010 is not preempted by ERISA. They assert that the statute lawfully invalidated Petitioner's status as an ERISA plan beneficiary of their father's nonprobate assets upon dissolution of her marriage to their father. They argue that there is consequently no named beneficiary under their father's pension plan and life insurance policy; and that his children should receive the benefits under his pension plan.[39] The Court of Appeals agreed with Respondents and awarded to them their father's pension plan benefits and life insurance proceeds.

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39 David A. Egelhoff's Voluntary Investment [pension] plan provides:

"The VIP Office will only recognize beneficiary designations and changes that are filed on the official VIP beneficiary designation form and received before your death. You may not designate or change a beneficiary by using other documents such as divorce decrees, prenuptial agreements, wills or trusts. If you have not designated a beneficiary on the appropriate form, you have an invalid beneficiary designation, or your beneficiary is no longer living, benefits will be paid in the following sequence:

"1. To your surviving spouse.

"2. If there is no surviving spouse, to your children in equal shares.

"3. To another relative designated by the Voluntary Investment Plan Committee or to your estate."

Clerk's Papers (No. 94-4-016919-1) at 45.

PREEMPTION

ERISA is a comprehensive federal statute which regulates employee pension and welfare plans.[40] It is designed to promote the interests of employees and their beneficiaries in employee benefit plans.[41] ERISA contains a broad preemption provision that supersedes state laws that "relate to" employee benefit plans. 29 U.S.C. § 1144(a) states "[ERISA] shall supersede any and all State laws insofar as they . . . relate to any employee benefit plan [covered by the statute]."[42]

29 U.S.C. § 1144(a) reads:

> **(a) Supersedure; effective date**
>
> Except as provided in subsection (b) of this section, *the provisions of this subchapter and subchapter Id. of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section*

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40 29 U.S.C. §§ 1001-1461. *See Cutler v. Phillips Petroleum Co.*, 124 Wash.2d 749, 756, 881 P.2d 216 (1994), *cert. denied*, 515 U.S. 1169, 115 S.Ct. 2634, 132 L.Ed.2d 873 (1995).

41 *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 90, 103 S.Ct. 2890, 2896, 77 L.Ed.2d 490 (1983); *see* 29 U.S.C. § 1001(b).

42 Additional United States Supreme Court cases broadly interpreting ERISA's preemption language include: *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 90, 103 S.Ct. 2890, 2896, 77 L.Ed.2d 490 (1983); *Mackey v. Lanier Collection Agency & Serv., Inc.*, 486 U.S. 825, 829, 108 S.Ct. 2182, 100 L.Ed.2d 836 (1988); *District of Columbia v. Greater Wash. Bd. of Trade*, 506 U.S. 125, 113 S.Ct. 580, 121 L.Ed.2d 513 (1992); *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384, 112 S.Ct. 2031, 119 L.Ed.2d 157 (1992).

> *1003(b) of this title*. This section shall take effect on January 1, 1975

(Emphasis added.)

In earlier United States Supreme Court cases, the Court characterized ERISA's preemption clause as "having a broad scope"[43] and "expansive sweep,"[44] being "conspicuous [in] its breadth" and written "'deliberately expansive' language [that] was 'designed to "establish pension plan regulation as exclusively a federal concern."'"[45]

In *Shaw v. Delta Air Lines, Inc.*, the United States Supreme Court concluded that state law "relates to" an employee benefit for purposes of § 1144(a) "if it has a connection with or reference to such a plan."[46] The Court also concluded that state law may "relate to" a benefit plan, and consequently be preempted, "even if the law is not specifically designed to affect such plans, or the effect is only indirect" and includes preemption of laws that are consistent with ERISA's policies and substantive requirements.[47]

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43 *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 739, 105 S.Ct. 2380, 2388-89, 85 L.Ed.2d 728 (1985).

44 *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 47, 107 S.Ct. 1549, 1552-53, 95 L.Ed.2d 39 (1987).

45 *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 138, 111 S.Ct. 478, 112 L.Ed.2d 474 (1990) (quoting *FMC Corp. v. Holliday*, 498 U.S. 52, 58, 111 S.Ct. 403, 407, 112 L.Ed.2d 356 (1990) and *Pilot Life Ins. Co.*, 481 U.S. at 46, 107 S.Ct. 1549) (quoting *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 523, 101 S.Ct. 1895, 68 L.Ed.2d 402 (1981)).

46 *Shaw*, 463 U.S. at 97, 103 S.Ct. 2890.

47 *Id.*

This Court previously adopted the expansive interpretation of § 1144(a) announced by the United States Supreme Court in *Ingersoll-Rand,* and has consistently held that if the court's attention must be directed to an ERISA plan, the cause of action then "relates to" the ERISA plan.[48]

Recently, however, ERISA preemption analysis by the United States Supreme Court, as evidenced by *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.,*[49] has signaled a significant retreat from its expansive reading of § 1144(a). The Court in *Travelers* departed from its previous direction in defining the "expansive sweep"[50] of § 1144(a). The Court indicated it was "discarding "uncritical literalism" in favor of the objectives of ERISA "as a guide to the scope of the state law that Congress understood would survive."[51] The Court of Appeals, Division I, has also adopted a narrower reading of ERISA's preemption clause.[52]

While the Court in *Travelers* again noted the expansive scope of the language of the preemption clause, it

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48 *Cutler,* 124 Wash.2d at 763, 881 P.2d 216 (quoting *Ingersoll-Rand*, 498 U.S. at 140, 111 S.Ct. 478); *see also Puget Sound Elec. Workers Health & Welfare Trust Fund v. Merit Co.*, 123 Wash.2d 565, 568-70, 870 P.2d 960 (1994); *Boutillier v. Libby, McNeill & Libby, Inc.,* 42 Wash.App. 699, 713 P.2d 1110, *review denied,* 106 Wash.2d 1005 (1986).

49 514 U.S. 645, 115 S.Ct. 1671, 131 L.Ed.2d 695 (1995).

50 *Pilot Life Ins. Co.,* 481 U.S. at 47, 107 S.Ct. 1549.

51 *Travelers,* 514 U.S. at 656, 115 S.Ct. 1671.

52 *See Kahn v. Salerno,* 90 Wash.App. 110, 951 P.2d 321 (1998); *Ironworkers Dist. Council v. Woodland Park Zoo Planning & Dev.,* 97 Wash.App. 676, 942 P.2d 1054 (1997).

stated, nonetheless, that "[w]e simply must go beyond the unhelpful text and the frustrating difficulty of defining its key term, and look instead to the objectives of the ERISA statute."[53] The basic objective of Congress, the Court concluded, "was to avoid a multiplicity of regulation in order to permit the nationally uniform administration of employee benefit plans."[54] The Court acknowledged its prior decisions have held that ERISA preempted state laws that mandated employee benefit structures or their administration, as well as state laws providing alternative enforcement mechanisms.[55] But the Court did not strike down the state law in that case[56] because, while having some indirect economic impact, the law did not bind employee plan administrators to any particular choice of plan or preclude the uniform provision and administration of plans.[57]

United States Supreme Court decisions following *Travelers*[58] clarified ERISA's preemptive reach to involve the "identi[fication of] the field in which ordinary field pre-emption applies . . . and, . . . ordinary conflict

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53 *Travelers,* 514 U.S. at 656, 115 S.Ct. 1671.

54 *Id.* at 657, 115 S.Ct. 1671.

55 *Id.* at 658, 115 S.Ct. 1671.

56 The New York statute, N.Y. McKinney's Public Health Law § 2807-c, required hospitals to collect surcharges from patients covered by commercial insurers but not those covered by Blue Cross or Blue Shield Plans.

57 *Id.* at 659-60, 115 S.Ct. 1671.

58 *See California Div. of Labor Standards Enforcement v. Dillingham Construction, N.A., Inc.,* 519 U.S. 316, 117 S.Ct. 832, 136 L.Ed.2d 791 (1997); *see also John Hancock Mutual Life Ins. Co. v. Harris Trust & Sav. Bank,* 510 U.S. 86, 99, 114 S.Ct. 517, 126 L.Ed.2d 524 (1993).

pre-emption."[59] In *California Div. of Labor Standards Enforcement v. Dillingham Construction, N.A., Inc.*, the Court relied upon *Travelers* in analyzing a state statute with the "presumption that ERISA did not intent to supplant it."[60] The Court stated that in areas traditionally left to state regulation,[61] and with which ERISA is not expressly concerned, it would be "unsettling" to hold that state law is preempted whenever it has an indirect effect on ERISA plans.[62]

Similarly, the Court in *DeBuono v. NYSA-ILA Med. & Clinical Servs. Fund* concluded that ERISA did not modify the initial presumption against preemption.[63]

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[59] *Dillingham*, 519 U.S. at 336, 117 S.Ct. 832 (Scalia, J., concurring) (emphasis omitted) ("Relate to" is not a test for preemption but simply an identification of the field in which ordinary field preemption applies the field of laws regulating employee benefit plans).

[60] *Id.* at 331-32, 117 S.Ct. 832. (The Court upheld a law prohibiting payment of lower wages to apprentices trained in unapproved programs)

[61] Stating an "assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress." *Id.* at 325, 117 S.Ct. 832 (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230, 67 S.Ct. 1146, 1152, 91 L.Ed.2d 1447 (1947)); *see also Gade v. National Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 98, 112 S.Ct. 2374, 2383, 120 L.Ed.2d 73 (1992) (State Law is preempted by ERISA where it is "an obstacle to the accomplishment and execution of the full purposes and objectives of Congress").

[62] *Dillingham*, 519 U.S. at 330-31, 117 S.Ct. 832.

[63] 520 U.S. 806, 117 S.Ct. 1747, 138 L.Ed.2d 21 (1997)

The Court observed that the statute in that case[64] neither prohibited a method of calculating benefits that federal law permitted nor required employers to provide certain benefits. The case was not one in which the existence of a pension plan was critical to the state law cause of action or in which the state statute expressly referred to ERISA plans.[65] The Court noted that in past decisions describing the expansive nature of the preemption, it had not been necessary to rely on that expansive character in finding preemption because the state laws at issue had a clear connection with or reference to ERISA plans.[66]

The effect of *Travelers* and its progeny favors a retreat from the expansive preemption doctrine this Court has previously followed to ensure ERISA's objective of protecting workers and Washington's sovereign interest in exercising its traditional police powers in the area of domestic relations and family law.

LIFE INSURANCE PROCEEDS

The Court of Appeals decided the issue of entitlement to Decedent David A. Egelhoff's life insurance proceeds by reference to statutes and case law,[67] but did not consider whether decedent's life insurance plan is a

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[64] *DeBuono*, 520 U.S. at 809, 117 S.Ct. 1747 (The statute, N.Y. McKinney's Public Health Law § 2807-d, imposed a tax on a medical center operated with ERISA funds).

[65] *Id.* at 814-15, 117 S.Ct. 1747.

[66] *Id.* at 813, 117 S.Ct. 1747.

[67] *Egelhoff*, 93 Wash.App. at 320-21, 968 P.2d 924. The Court of Appeals relied upon the Uniform Simultaneous Death Act (USDA), chapter 11.05 RCW, and RCW 48.18.390 (beneficiary treated as having predeceased policyholder, leaving life insurance proceeds to the policyholder's estate) and case law (statutory heirs inherit the life insurance policy proceeds when policyholder dies intestate).

"welfare benefit plan" or a "pension benefit plan."[68] Petitioner asserts ERISA preempts RCW 11.07.010 as it relates to decedent's life insurance plan and his pension plan. Respondents argue to the contrary that the United States Supreme Court made a distinction between "welfare" and "pension" plans, finding that Congress elected to regulate pension benefit plans more rigorously than welfare plans.[69] Respondents conclude that consequently decedent's life insurance plan is a "welfare benefit plan" and not subject to ERISA preemption under its antialienation and preemption provisions. According to Respondents, RCW 11.07.010 would control and invalidate Petitioner Donna Rae Egelhoff's designation as beneficiary under Decedent David A. Egelhoff's life insurance plan. Respondents assert they were properly awarded the proceeds of their father's life insurance by the Court of Appeals.

Amicus Curiae Secretary of Labor[70] states that ERISA's antialienation provision, 29 U.S.C. § 1056(d), only involves "pension" plans and does not involve

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68 *See* Br. of Appellant, Court of Appeals, Division II, at 34-36; *see* 29 U.S.C. § 1002(3) which states [t]he term "employee benefit plan" or "plan" means an employee welfare benefit plan or an employee pension benefit plan . . . ".

69 *Id.* at 35 (citing *Mackey v. Lanier Collection Agency & Serv., Inc.*, 486 U.S. 825, 829, 108 S.Ct. 2182, 100 L.Ed.2d 836 (1988); *Equitable Life Assurance Society of the U.S. v. Crysler*, 66 F.3d 944 (8th Cir. 1995).

70 Briefs Amicus Curiae were filed in support of Appellant Donna Rae Egelhoff's petition for review by the Secretary of Labor; the Boeing Company; the Boeing Company Employee Benefit Plans Committee; Puget Sound Energy, Inc.; Safeco Corporation; Weyerhaeuser Company; the Sheet Metal Workers' National Pension Fund; and the Washington State Trial Lawyers Association.

"welfare" plans.[71] A review of the ERISA statute supports this conclusion.[72] Under ERISA a "pension" plan must include provisions prohibiting the alienation of "pension" benefits, but "welfare" plan benefits are exempt from this requirement. We follow the reasoning of the United States Supreme Court in *Mackey v. Lanier Collection Agency & Serv., Inc.*[73] and conclude that Respondents, the children of Decedent David A. Egelhoff, are entitled to the proceeds of his employment-based life insurance policy.

PENSION PLAN PROCEEDS

The interpretation of "field preemption" and "conflict preemption" clarified in *Travelers* is pivotal to any discussion of ERISA preemption. In determining the scope of the "field" occupied by ERISA, federal laws will not preempt state statutes in areas that are "remote from the areas with which ERISA is expressly concerned—'reporting, disclosure, fiduciary responsibility,

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71 Amicus Br. of the Secretary of Labor 11.

72 The antialienation provision of ERISA, 29 U.S.C. § 1056(d)(1), states "[e]ach pension plan shall provide that benefits provided under the plan may not be assigned or alienated." 29 U.S.C. § 1051(1) "appl[ies] to any employee benefit . . . other than—(1) an employee welfare benefit plan[.]" Under 29 U.S.C. § 1002(1) is "[t]he terms 'employee welfare benefit plan' and 'welfare plan' mean any plan, fund, or program . . . established or . . . maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment. . . ."

73 486 U.S. 825, 108 S.Ct. 2182, 100 L.Ed.2d 836 (1988).

and the like.'"[74] Preemption analysis requires consideration of the objectives of Congress in enacting ERISA—the promotion of employee interests and the protection of those interests against mismanagement by plan administrators.[75] Effectuating the areas of ERISA's primary concern leaves to the States the duty to regulate local matters even when such regulation has an indirect impact upon or slight connection with ERISA plans.[76] The United States Court of Appeals for the Ninth Circuit observed in *Emard v. Hughes Aircraft Co.*[77] that "ERISA's preemption clause no longer has the power to transmute into a federal question every issue that brushes against the periphery of an ERISA plan."[78] The use of a federal statute to forbid state regulation in "areas where ERISA has nothing to say"[79] would unjustly restrain the legitimate exercise of the states' historic police powers[80] without achieving the objectives sought by Congress.

Petitioner Donna Rae Egelhoff and amici curiae[81] assert that RCW 11.07.010 does not apply to ERISA plans. This is not correct. The fact is that the statute

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[74] *Dillingham,* 519 U.S. at 330, 117 S.Ct. 832 (quoting *Travelers,* 514 U.S. at 661, 115 S.Ct. 1671).

[75] *Massachusetts v. Morash,* 490 U.S. 107, 114, 109 S.Ct. 1668, 104 L.Ed.2d 98 (1989).

[76] *See Travelers,* 514 U.S. at 661-62, 115 S.Ct. 1671.

[77] 153 F.3d 949 (9th Cir. 1998), *cert. denied,* -- U.S. --, 119 S.Ct. 903, 142 L.Ed.2d 902 (1999).

[78] *Emard,* 153 F.3d at 961.

[79] *Dillingham*, 519 U.S. at 330, 117 S.Ct. 832.

[80] *Rice*, 331 U.S. at 230, 67 S.Ct. 1146.

[81] Amicus Curiae Washington State Trial Lawyers Association does not join in these assertions.

may apply to ERISA plans. The question is whether it is preempted by ERISA. RCW 11.07.010 involves an area of domestic and family that has long been the traditional domain of the states.[82] In areas involving traditional state regulation, "the starting presumption [is] that Congress does not intend to supplant state law."[83] Petitioner has the considerable burden of overcoming this presumption.[84]

A state law "relates to" an ERISA plan if it either "refers to" or has a "connection with" such a plan.[85] Under the first part of this inquiry, "reference to" an ERISA plan means the state law must act "immediately and exclusively" upon the ERISA plans,[86] or alternatively, the existence of ERISA plans which are "essential to the law's operation."[87] It is not sufficient that the statutory definition of nonprobate assets under RCW 11.07.010(5)(a) merely mentions an "employee benefit

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[82] *Boggs v. Boggs*, 520 U.S. 833, 840, 117 S.Ct. 1754, 138 L.Ed.2d 45 (1997); *See Hisquierdo v. Hisquierdo,* 439 U.S. 572, 581, 99 S.Ct. 802, 808, 59 L.Ed.2d 1 (1979); *see also Rose v. Rose,* 481 U.S. 619, 107 S.Ct. 2029, 95 L.Ed.2d 599 (1987).

[83] *Travelers*, 514 U.S. at 654-55, 115 S.Ct. 1671.

[84] *DeBuono,* 520 U.S. at 814, 117 S.Ct. 1747.

[85] *Shaw,* 463 U.S. at 96-97, 103 S.Ct. 2890.

[86] *Mackey,* 486 U.S. at 830, 108 S.Ct. 2182 (A Georgia anti-garnishment statute which applied solely to ERISA pension plans had a sufficient "reference to" ERISA plans, while a garnishment statute, general in scope, which applied to both ERISA and non-ERISA plans did not).

[87] *Dillingham,* 519 U.S. at 325, 117 S.Ct. 832.

plan."[88] The statute does not apply immediately and exclusively to an ERISA plan, nor is the existence of such a plan essential to operation of the statute.[89]

This Court must address whether RCW 11.07.010 has a sufficient "connection with'" an ERISA plan to compel preemption analysis." Generally, a state law has a connection with an ERISA plan if it mandates plan benefit structures[90] or some aspect of their administration.[91] In these situations requiring conflict preemption analysis,[92] a state law which directly or indirectly invades the core functions of ERISA regulation must give way to the comprehensive federal scheme favored by Congress under the four-factor approach of the Court of Appeals for the Ninth Circuit.[93]

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[88] As in *Dillingham*, the Court rejected the argument that mention of "joint apprenticeship committee" related to ERISA plans where approved class of apprenticeship sponsors also included non-ERISA plans.

[89] *See Emard*, 153 F.3d at 954.

[90] *See Shaw*, 463 U.S. at 97, 103 S.Ct. 2890 (ERISA preempted New York laws prohibiting employers from structuring benefit plans in a way that discriminated on the basis of pregnancy, and mandated payment of other specific benefits).

[91] *Travelers*, 514 U.S. at 657-58, 115 S.Ct. 1671.

[92] Conflict preemption analysis requires a two-step inquiry to determine (1) whether the state law at issue conflicted with any specific provision of ERISA and (2) whether application of the state law would frustrate Congress' purpose in enacting ERISA. *See Emard*, 153 F.3d at 957-59.

[93] The United States Court of Appeals for the Ninth Circuit in *Aloha Airlines, Inv. v. Ahue*, 12 F.3d 1498, 1504 (9th Cir. 1993), identified four-factors to determine whether a state law has a "connection with" an ERISA benefit plan: "(1) whether the state law regulates the types of benefits of ER-

[Footnote continued on next page]

However, the mere fact that RCW 11.07.010 may operate upon the beneficiary designation in an ERISA plan is not of itself a sufficient connection to require preemption. The statute operates under the legal fiction that "the former spouse [did not] survive the decedent, having died at the time of entry of the decree of dissolution. . . ."[94] Benefits under the plan remain to be distributed in accord with the plan documents under ERISA.[95] While a state statute such as RCW 11.07.010 may bring the default distribution provisions into effect, it does not alter the nature of the plan itself, the administrator's fiduciary duties, or the requirements for plan administration. The Washington Court of Appeals concluded in this case that the effect of RCW 11.07.010 upon an ERISA plan is "'too slight to overcome the pre-

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[Footnote continued from previous page]

ISA employee welfare benefit plans . . .; (2) whether the state law requires the establishment of a separate employee benefit plan to comply with the law . . .; (3) whether the state law imposes reporting, disclosure, funding, or vesting requirements for ERISA plans . . .; and (4) whether the state law regulates certain ERISA relationships, including the relationships between an ERISA plan and employer and, to the extent an employee benefit plan is involved, between the employer and employee." *Id.* at 958 (citations omitted).

[94] RCW 11.07.010(2)(a).

[95] 29 U.S.C. § 1104(a)(1)(D) provides in pertinent part that "(1) . . . a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and—(A) for the exclusive purpose of: . . . (D) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this subchapter. . . ."

sumption against preemption of state family and family property law.'"[96] We agree.

The Ninth Circuit ERISA preemption analysis currently represents a minority view among other United States Circuit Courts,[97] that Court in *Emard* concluding that California law did not affect the administration of ERISA plans but "merely the ultimate ownership of distributed benefits."[98] We find that decision at least persuasive in interpreting the impact of RCW 11.07.010 in this case.

Amicus Curiae Boeing claims a "connection" exists because requiring plan administrators to investigate the marital status of beneficiaries and to determine whether a beneficiary designation remains valid under state law increases the administrative burdens on the plan, with resultant increase of costs and depletion of plan resources available for benefits to employees.[99] Similar arguments have been rejected by the United States Supreme Court.[100] Our interpretation of field preemption

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96 *Egelhoff*, Wash.App. at 326, 968 P.2d 924 (quoting *Emard*, 153 F.3d at 959).

97 *See Metropolitan Life Ins. Co. v. Petit*, 164 F.3d 857 (4th Cir. 1998); *Mattei v. Mattei*, 126 F.3d 794 (6th Cir. 1997), *cert. denied*, -- U.S. --, 118 S.Ct. 1799, 140 L.Ed.2d 939 (1998); *Brandon v. Travelers Ins. Co.*, 18 F.3d 1321 (5th Cir. 1994); *Krishna v. Colgate Palmolive Co.*, 7 F.3d 11 (2d Cir. 1993); *Metropolitan Life Ins. Co. v. Hanslip*, 939 F.2d 904 (10th Cir. 1991); *MacLean v. Ford Motor Co.*, 831 F.2d 723 (7th Cir. 1987).

98 *Emard*, 153 F.3d at 959.

99 *See* Br. of Amici Curiae Boeing Co. et al. at 6-11.

100 *See Travelers*, 514 U.S. at 659-61, 115 S.Ct. 1671 (Preemption rejected based on indirect economic influence on plan administration). *DeBuono*, 520 U.S. at 815-17, 117

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under *Travelers*[101] leads us to the conclusion that RCW 11.07.010 does not "relate to" or have a "connection with" such a plan.

Petitioner and supporting amici rely upon the amendments to ERISA in the antialienation provision, 29 U.S.C. § 1056(d)(1),[102] to support their claim that

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S.Ct. 1747. (Direct tax reducing fund assets that would otherwise be available to provide plan members with benefits was not sufficiently connected to ERISA plans to require preemption. "Any state tax, or other law, that increases the cost of providing benefits to covered employees will have some effect on the administration of ERISA plans, but that simply cannot mean that every state law with such an effect is pre-empted by the federal statute.").

101 The Court in *Travelers* recognized the possibility that "a state law might produce such acute, albeit indirect, economic effects, by intent or otherwise, as to force an ERISA plan to adopt a certain scheme of substantive coverage or effectively restrict its choice of insurers, and that such a state law might indeed be pre-empted." *Id.* at 668, 115 S.Ct. 1671. As stated by the Court of Appeals and argued by the Respondents, such "major damage" to ERISA's objectives cannot be shown because of RCW 11.07.010. *Egelhoff*, 93 Wash.App. at 326, 968 P.2d 924 (quoting *Hisquierdo*, 439 U.S. at 581, 99 S.Ct. 802); *see* Supplemental Br. of Resp'ts at 2-6, 15; *see* Amicus Br. of the Wash. State Trial Lawyers Ass'n at 12.

102 29 U.S.C. § 1056(d)(1) states that "[e]ach pension plan shall provide that benefits provided under the plan may not be assigned or alienated." 29 U.S.C. § 1056(d)(3)(A) "appl[ies] to the creation, assignment, or recognition of a right to any benefit payable with respect to a participant pursuant to a domestic relations order, except that paragraph (1) shall not apply if the order is determined to be a "qualified domestic relations order." *See* 29 U.S.C. § 1056(d)(3)(B)(i) (defining a "qualified domestic relations order"). In general, the antialienation provision restricts diversion of plan bene-

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under *Boggs v. Boggs*[103] a direct conflict exists between RCW 11.07.010 and 29 U.S.C. § 1056(d)(1).[104] This assertion mischaracterizes the "field preemption" analysis under *Travelers*.

The United States Supreme Court in *Boggs* determined "conflict preemption" may defeat application of the state law, without considering whether it "relates to" an ERISA plan, if the relevant law conflicts with a specific ERISA provision.[105] The Louisiana law in that case allowed a plan beneficiary to bequeath the beneficiary's equitable interest in benefit plan proceeds to a third party through the beneficiary's will.[106] This was in direct contravention of the antialienation provision requiring that proceeds be distributed solely in accordance with the plan documents or the terms of a limited

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fits to someone other than a payee under the plan documents, unless executed in a specified manner to be recognized as a "qualified domestic relations order" (QDRO). *See* 29 U.S.C. § 1056(d)(3)(A). ERISA provides a limited exception to the anti-alienation provision for QRDO's. This provision, enacted as part of the REA amendments, is intended to protect spouses and dependents of employees who participate in ERISA benefit plans. *See Boggs*, 520 U.S. at 846-48, 117 S.Ct. 1754.

103 520 U.S. 833, 117 S.Ct. 1754, 138 L.Ed.2d 45 (1997).

104 Pet. for Review at 16-17; Secretary of Labor Amicus Br. at 5-11; Boeing Co., et al. Amicus Br. at 4-6.

105 *Boggs,* 520 U.S. at 841, 117 S.Ct. 1754.

106 *Id.* at 836, 117 S.Ct. 1754. (An "alternate payee" under a QDRO is considered a plan "beneficiary." 29 U.S.C. § 1056(d)(3)(J)).

statutory exception, such as the "qualified domestic relations order" (QDRO) exception.[107]

RCW 11.07.010 does not conflict with ERISA's antialienation provision because it does not operate to divert benefit plan proceeds from distribution under terms of the plan documents.[108] *Amicus* Secretary of Labor states that RCW 11.07.010 is [l]ike the community property in *Boggs*.[109] That is not correct. The statute in that case directed disposition of the proceeds of a benefit plan, and allowed plan beneficiaries to dispose of their share of the proceeds to alternate payees by testamentary transfer.[110] The United States Supreme Court concluded the transfer was in violation of the antialienation provision, which does not recognize state law mechanisms for distributing plan proceeds to a third party except under certain specific exceptions, such as when a former spouse receives benefits of a plan under the terms of a QDRO.[111]

RCW 11.07.010 does not require distribution of benefit plan assets to a third party, nor does it in any way direct payment of proceeds. It merely invalidates designation of a former spouse as beneficiary of a non-

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107 *Id.* at 846-51, 117 S.Ct. 1754; *see also Ablamis v. Roper,* 937 F.2d 1450 (9th Cir. 1991). (California community property law providing for testamentary transfers to third party of plan beneficiary's equitable share in ERISA pension plan directly conflicted with anti-alienation provision).

108 *See* Amicus Br. of the Wash. State Trial Lawyers Ass'n at 14.

109 Amicus Br. of the Secretary of Labor at 10.

110 *Boggs,* 520 U.S. at 836-37, 117 S.Ct. 1754.

111 *Id.* at 851-52, 117 S.Ct. 1754 (Testamentary transfer under state law condemned as a diversion of retirement benefits in violation of ERISA).

probate asset by creating the legal fiction that the spouse predeceased the now-deceased owner.[112] While the underlying circumstances to which the distribution scheme of an ERISA plan must be applied is altered, the plan administrator is not required to follow provisions for distributing the proceeds other than those in the plan. There is no diversion of plan benefits.[113] Under federal preemption analysis, we conclude that the nexus between participant and beneficiary in this case in not compromised.[114]

Despite the reality of her survival under RCW 11.07.010 Petitioner Donna Rae Egelhoff is legally considered to have predeceased the plan participant, Decedent David A. Egelhoff, with the result that there is no valid beneficiary designated in the plan. Without reliance upon any state distribution scheme, his children and heirs, Respondents, would receive his pension plan benefits. The resulting statutorily effected change in the underlying circumstances for administration of the plan does not impede the plan administrator's obligation to pay under the terms of the plan documents. There is no conflict with the specific ERISA provision proscribing alienation of benefits. We conclude that RCW 11.07.010 is not preempted by ERISA. This statute, involving domestic relations and family law, is an area of law historically left to state control. RCW 11.07.010 does not "refer to" or have a significant "connection with" an ERISA plan to require preemption. Nor does RCW 11.07.010 conflict with any specific ERISA provision, including the antialienation clause under 29 U.S.C. § 1056(d)(1). Under this reasoning, we conclude that

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[112] RCW 11.07.010(2)(a).

[113] *Boggs,* 520 U.S. at 851-52, 117 S.Ct. 1754.

[114] *Id.*

Petitioner Donna Rae Egelhoff is not entitled to benefits under her deceased former husband's pension plan. We need not address the question of waiver under the property settlement incorporated in the dissolution.

SUMMARY AND CONCLUSIONS

Petitioner Donna Rae Egelhoff's claims for benefits under Decedent David A. Egelhoff's employment-based life insurance and pension plans were properly denied by the Court of Appeals, Division II.

Recent United States Supreme Court cases following *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.* lead to the conclusion that the Court's former commitment to an expansive interpretation of ERISA's preemptive scope is yielding to a narrowed view of the field occupied by this statutory scheme. The effect of *Travelers* and cases following justify retreat from the expansive preemption doctrine our Court has previously followed to ensure ERISA's objective of protecting workers and Washington's sovereign interest in exercising its traditional police powers in the area of domestic relations and family law.

Respondents' conclusion that the decedent's life insurance plan is a "welfare benefit plan" and not subject to ERISA preemption under its antialienation and preemption provisions has merit. RCW 11.07.010 invalidates Petitioner Donna Rae Egelhoff's designation as beneficiary under Decedent David A. Egelhoff's life insurance plan because she is by legal fiction considered to have died at the time their decree of dissolution was entered. Respondents were properly awarded the proceeds of their father's life insurance by the Court of Appeals.

Under the interpretation of "field preemption" and "conflict preemption" clarified in *Travelers*, RCW 11.07.010 does not "relate to" an ERISA plan. This statute neither "refers to" nor has sufficient "connection with" an ERISA plan to justify preemption. Nor is

RCW 11.07.010 directly in conflict with any specific provision of ERISA, including the antialienation provision under 29 U.S.C. § 1056(d)(1). Respondents were properly awarded the benefits under their father's pension plan.

We affirm the decision of the Court of Appeals, Division II, which reversed the orders of summary judgment of the Pierce County Superior Court, and conclude that Respondents Samantha Egelhoff and David A. Egelhoff, Jr., the children and heirs of Decedent David A. Egelhoff, are entitled to receive the benefits under their father's pension plan and the proceeds of his life insurance.

GUY, C.J., JOHNSON, MADSEN, ALEXANDER, TALMADGE, IRELAND, SANDERS, JJ., AND COLEMAN, J.P.T., concur.

APPENDIX B

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

IN THE MATTER OF THE ESTATE OF DAVID A. EGELHOFF, DECEASED. SAMANTHA EGELHOFF, a minor by and through her natural parent KATE BREINER; and DAVID EGELHOFF, a single person, Appellants, v. DONNA RAE EGELHOFF AND "JOHN DOE" EGELHOFF, wife and husband, Respondents	No. 22293-1-II No. 22562-0-II (consolidated) PUBLISHED OPINION Filed: December 23, 1998

Hunt, J. – Decedent David Egelhoff's children from his first marriage appeal the grant of summary judgment to his second wife, Donna Egelhoff.[1] The trial court awarded to Donna, the named beneficiary, the proceeds of David's employer—provided life insurance and his pension plan benefits, even though she and David had dissolved their marriage more than two months before his death. The trial court reasoned that ERISA[2] preempted state law, which otherwise could operate automatically to redesignate beneficiaries upon dissolution

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[1] For ease of reference we refer to the parties by their first names; we mean no disrespect.

[2] Employee Retirement Income Security Act, 29 U.S.C. 1001, et seq.

of a marriage. Holding that ERISA does not preempt the state law in question and that Donna was not entitled to the insurance proceeds or pension funds, we reverse.

FACTS

David and Donna Egelhoff married on November 4, 1988; they separated on October 1, 1993. During their marriage, David had named Donna as the beneficiary of his life insurance policy and his pension plan, both provided by his employer, the Boeing Company. The decree of dissolution was entered on April 22, 1994. As part of the property settlement distribution, David was awarded "100% of his Boeing retirement 401K[3] and IRA[4]."

On June 23, 1994, David was involved in a serious car accident. On July 8, 1994, he died from his injuries. Donna was still listed as the beneficiary of both David's insurance policy and his pension plan. David died intestate.

David's statutory heirs,[5] his children from his first marriage, filed suit, alleging that under the dissolution

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3 Defined by 26 U.S.C. § 401(k)

4 Defined by 26 U.S.C. § 408(a).

5 RCW 11.04.015 provides that:

> The net estate of a person dying intestate . . . shall be distributed as follows:
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> . . .
>
> (2) Shares of others than surviving spouse. The share of the net estate not distributable to the surviving spouse, or the entire net estate if there is no surviving spouse, shall descend and be distributed as follows: To the issue of the intestate; if they are all in the same degree of kinship to the estate, they shall take equally, or if of unequal degree, then those of more remote degree shall take by representation.

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decree's property distribution settlement, Donna had waived her rights to the pension plan. After Donna received the insurance proceeds, the children filed a conversion action, alleging that Washington law, specifically RCW 11.07.010, had operated to remove her as the beneficiary of the insurance policy.

The trial court entered summary judgment for Donna as to both benefits. The trial court ordered that the insurance policy be "administered in accordance with the Employee Retirement Income Security Act and the designated beneficiary, Donna Rae Egelhoff shall have all legal rights to the proceeds which have been paid thereto."[6] The trial court similarly ordered that the pension plan should be "administered in accordance with the Employ[ee] Retirement Income Security Act of 1974 ("ERISA") and that the designated beneficiary, Donna Rae Egelhoff shall have all legal rights thereto[.]" The trial court stayed the order for summary judgment with regard to the pension plan proceeds, directing that they not be distributed to any party pending the outcome of this appeal. As noted above, the insurance proceeds had already been distributed to Donna before the litigation commenced.

The children timely appealed and we consolidated the appeals.[7]

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> gree, then those of more remote degree shall take by representation.

6 The trial court apparently disregarded an affidavit from the children's mother, David's first wife, attesting to Donna's statements that she knew David had intended to remove her as beneficiary of his life insurance policy and would be angry if he knew Donna had received the proceeds.

7 Because we hold that RCW 11.07.010 is not preempted by ERISA, we need not to address the children's alternative

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ANALYSIS

1. STANDARD OF REVIEW

When reviewing a trial court's order of summary judgment, we engage in the same inquiry as the trial court. *Wilson v. Steinbach*, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982). Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *See* CR 56(dc), *Mutual of Enumclaw Inc. Co. v. Jerome*, 122 Wn.2d 157, 160, 856 P.2d 1095 (1993). Summary judgment should be granted only if reasonable persons could reach but one conclusion, after considering the evidence in the light most favorable to the non-moving party. *Reynolds v. Hicks*, 134 Wn.2d 491, 495, 951 P.2d 761 (1998).

II. FEDERAL LAW

The pension plan and insurance policy at issue in this case fall under ERISA because they were provided by David's employer, the Boeing Company. ERISA regulates all employee benefits plans sponsored by an employer or an employee organization. *Cutler v. Phillips Petroleum Co.*, 124 Wn.2d 749, 756, 881 .2d 216 (1994).

III. STATE LAW

The children rely on RCW 11.07.010 to support their claim that they, and not Donna, should receive both the proceeds of the pension plan and the insurance policy.

RCW 11.07.010 provides:

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assertion that Donna "waived" her right to the pension proceeds via the dissolution decree.

Nonprobate assets on dissolution or invalidation of marriage
(1) This section applies to all nonprobate assets, wherever situated, held at the time of entry by a superior court of this state of a decree of dissolution of marriage or a declaration of invalidity.

(2)(a) *If a marriage is dissolved or invalidated, a provision made prior to that event that relates to the payment or transfer at death of the decedent's interest in a nonprobate asset in favor of or granting an interest or power to the decedent's former spouse is revoked.* A provision affected by this section must be interpreted, and the nonprobate asset affected passes, as if the former spouse failed to survive the decedent, having died at the time of entry of the decree of dissolution or declaration of invalidity.

. . .

(5) As used in this section, "nonprobate asset" means those rights and interests of a person having beneficial ownership of an asset that pass on the person's death under only the following written instruments or arrangements other than a decedent's will:

(a) A payable-on-death provision of a life insurance policy, employee benefit plan, annuity or similar contract, or individual retirement account[.]

(Emphasis added)

Donna argues that ERISA preempts RCW 11.07.010. If not preempted by ERISA, this statute would operate to revoke Donna's status as beneficiary upon dissolution of her marriage to David. This would leave no beneficiary listed on either the life insurance or

pension plan. As a result, under the terms of the pension plan, the children would receive David's pension benefits.[8]

With regard to the life insurance plan, RCW 48.24.160, which governs beneficiaries under group life insurance plans, seems to indicate that every plan should contain a designation of how benefits will be paid should no beneficiary be listed at the time of decedent's death.[9] But the life insurance plan in this case contains no such designation. Because there are no relevant reported cases interpreting RCW 11.07.010, an analogy to the Uniform Simultaneous Death Act (USDA) is helpful: Both the USDA and RCW 11.07.010 operate, under certain circumstances, to treat the holder of life insurance as surviving the beneficiary as a matter of law. Under the USDA, where the beneficiary is treated as having predeceased the policyholder, the proceeds of a life insurance policy belong to the policyholder's estate, RCW 11.05.040, unless the insurance plan designates an alternate procedure for determining a beneficiary. RCW 48.18.390. Where such a policyholder has left no will, his statutory heirs inherit the proceeds. *In re Saunders' Estates*, 51 Wn.2d 274, 276, 317 P.2d 528 (1957) *In re*

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8 "If you have not designated a beneficiary on the appropriate form, you have an invalid beneficiary designation, or your beneficiary is no longer living, benefits will be paid in the following sequence:

1. To your surviving spouse.
2. If there is no surviving spouse, to your children in equal shares."

9 "There shall be a provision that any sum becoming due by reason of the death of the individual insured shall be payable to the beneficiary designated by such individual, subject to the provisions of the policy in the event there is no designated beneficiary. . ." RCW 48.24.160.

Clise's Estates, 64 Wn.2d 320, 321, 391 P.2d 547 (1964).

Similarly, under RCW 11.07.010, we treat David as having survived Donna for purposes of distributing life insurance proceeds. As a result, the life insurance proceeds should have been paid first to David's estate and then to his children (as his statutory heirs) as part of his estate. Thus, under RCW 11.07.010, the children, and not Donna, were entitled to both the insurance proceeds an the pension benefits.

IV. PREEMPTION

ERISA preempts state laws that "relate to" employee benefits plans.[10] We construe this phrase in accordance with Congress' intent in enacting ERISA – to provide uniformity in the administration of benefit programs. *Fort Halifax Packing Co., Inc. v. Coyne*, 482 U.S. 1, 11, 107 S. Ct. 2211, 96 L.Ed.2d 1 (1987). If state law affects ERISA-covered plans in "too tenuous, remote, or peripheral a manner," the state law does not "relate[] to" the plan and is therefore not preempted. *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 100 n. 21, 103 S. Ct. 2890, 77 L.Ed.2d 490 (1983).

The Supreme Court has recently[11] suggested that ERISA preemption should be limited with regard to ar-

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10 29 U.S.C. 1144(a) provides, in relevant part, that:

> Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title.

11 Earlier, the Supreme Court had interpreted ERISA's preemption statue as creating a "deliberately expansive" pre-

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eas traditionally left to state regulation. *See De Buono v. NYSA-ILA Medical and Clinical Svcs. Fund*, 520 U.S. 806, 117 S. Ct. 1747, 1751, 138 L.Ed.2d (1997). Courts "must go beyond the unhelpful text and the frustrating difficulty of defining its key term ['related to'], and look instead to the objectives of the ERISA statute as a guide to the scope of the state law that Congress understood would survive." *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 646, 656, 115 S. Ct. 1671, 131 L.Ed.2d 695 (1995).

Washington courts have also noted this change in the focus of ERISA preemption analysis. Division One has indicated that preemption is appropriate if it advances "ERISA's goal of providing uniform resolution of disputes for which an ERISA remedy [is] available." *Behavioral Sciences Institute v. Great-West Life*, 84 Wn. App. 863, 871-72, 930 P.2d 933 (1997).

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emption of state law. *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 46, 107 S. Ct. 1549, 95 L.Ed.2d 39 (1987). In *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 139, 111 S. Ct. 478, 112 L.Ed.2d 474 (1990), the Court ruled that "a state law may 'relate to' a benefit plan, and thereby be pre-empted, even if the law is not specifically designed to affect such plans, or the effect is only indirect." The Washington Supreme Court's traditional analysis of ERISA "preemption" is illustrated by *Cutler*, 124 Wn2d at 763, in which it relied primarily on *Ingersoll-Rand's* holding that employees' state law claims were preempted when they directly conflicted with an ERISA cause of action or rested upon the existence of an ERISA plan. *Ingersoll-Rand*, 498 U.S. at 140. As recently as 1996, the Washington Supreme Court indicated that ERISA "preempts any state law touching on ERISA benefit plans, even if those laws merely supplemented the Act and were consistent in purpose." *Stevedoring Svcs. Of America, Inc. v. Eggert*, 129 Wn.2d 17, 26, 914 P.2d 737 (1996).

> Rather than basing preemption on the mention of an ERISA plan in the complaint, we choose to apply a holistic approach to ERISA preemption emphasizing congressional intent and the purpose of ERISA.

Behavioral Sciences, 84 Wn. App. at 872. Division One has also ruled, "[W]e presume that ERISA does *not* supercede the historic police powers of the states unless that was the clear and manifest purpose of Congress." *Kahn v. Salerno*, 90 Wn. App. 110, 133, 951 P.2d 321 (1998).

Following Division One, we "begin our analysis with the presumption that ERISA does not preempt" the state law in question here – that spouses named as insurance and pension beneficiaries automatically lose such designation upon dissolution of marriage. *Kahn*, 90 Wn. App. At 134; *See also California Div. of Labor Standards Enforcement v. Dillingham Constr., N.A., Inc.*, 519 U.S. 316, 325, 117 S. Ct. 832, 136 L.Ed.2d 791 (1997). "Thus, the burden is on the party arguing for preemption to show, as a matter of law, that it was the clear and manifest purpose of Congress to supersede this type of . . . claim. *Kahn*, 90 Wn. App. At 134.

The most comprehensive summary of the current state of ERISA preemption law is *Emard v. Hughes Aircraft Co.*, 155 F.3d 949, 953 (9th Cir. 1998) (citing *Tounajian v. Frailey*, 135 F.3d 648, 654 n. 3 (9th Cir. 1998)), in which the Ninth Circuit noted that "[r[ecently, the scope of this broad 'relate to' preemption was markedly narrowed." The *Emard* court ruled:

> To guide our preemption analysis within the specific context of ERISA, we ask whether the state law at issue has (1) a "reference to" or (2) a "connection with" an ERISA plan.

Emard, 153 F.3d at 954.

A state law has "reference to" an ERISA plan where it "acts immediately and exclusively upon ERISA plans, . . . or where the existence of ERISA plans is essential to the law's operation." *Dillingham*, 519 U.S. at 325. RCW 11.07.010 does not act "immediately and exclusively upon ERISA plans," nor is the existence of ERISA plans "essential to the law's operation." Consequently, RCW 11.07.010 does not have a "reference to" ERISA plans and is preempted only if it has a "connection with" ERISA benefit plans.

The *Emard* court considered four factors in determining whether the California statute at issue had a "connection with" ERISA "such that application of the state law would frustrate ERISA's purposes":

> (1) whether the state law regulates the types of benefits of ERISA employee welfare benefit plans;
> (2) whether the state law requires the establishment of a separate employee benefit plan to comply with the law;
> (3) whether the state law imposes reporting, disclosure, funding, or vesting requirements for ERISA plans; and
> (4) whether the state law regulates certain ERISA relationships, including the relationships between an ERISA plan and employer and, to the extent an employee benefit plan is involved, between the employer and employee.

Emard, 153 F.3d at 958 (quoting *Operating Engineers Health and Welfare Trust Fund v. JWJ Contracting Co.*, 135 F.3d 671, 678 (9th Cir 1998)). The *Emard* court determined that the first three factors were not at issue and then rejected the contention that the California statute violated the fourth factor "by altering the administrative process for plans in California and by altering the designation of beneficiaries." *Emard*, 153 F.3d at 958.

Although ERISA preempts state laws affecting the *administration* of employee plans, RCW 11.07.010, like the California statute at issue in *Emard*, "does not affect the administration of plans; instead, it affects merely the ultimate ownership of distributed benefits." *Emard*, 153 F.3d at 959. As with the California statute at issue in *Emard*, under RCW 11.07.010,

> an ERISA administrator may pay insurance to the named beneficiary unless a contending claimant properly notifies the plan of his or her claim to the proceeds. In the absence of such a claim, payment to the named beneficiary absolves the plan of liability for further claims. California law therefore does not alter plan administration.

Emard, 153 F.2d at 959 (citation omitted). But if a "contending claim is made before disbursement, the administrator can leave the determination of the proper recipient of the proceeds to the parties through application of state property law[.]"[12]

The court also noted that:

> [u]nder the majority approach of [previous] opinions [concerning ERISA preemption], application of California law concerning the designation of a beneficiary, has a connection with ERISA and would therefore be preempted. Those opinions, though, rely on the Supreme Court's former approach to ERISA preemption, and their analyses therefore pro-

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[12] The *Emard* court did not address the situation where a competing claim was made for insurance proceeds *after* the proceeds had already been distributed to the named beneficiary. It is an issue in this case, but RCW 11.07.010 provides resolution.

> vide us little guidance. Applying the preemption approach required by the Court's recent cases, we hold that ERISA does not preempt California's law of community property in this instance.

Emard, 153 F.3d at 956-57. The court saw "no indication that Congress intended to safeguard an individual beneficiary's rights to the proceeds of an ERISA insurance plan as against another person claiming superior rights, under state law, to those proceeds." *Emard*, 153 F.3d at 958. The court also recognized that

> in the circumstances of a case such as this, the plan administrator must take certain steps to answer the complaint and either disburse the disputed funds to the prevailing claimant or deposit the funds with the court. But this burden on the administrator is too slight to overcome the presumption against preemption of state family and family property law.

Emard, 153 F.3d at 959 (citing *Boggs v. Boggs*, 520 U.S. 833, 117 S. Ct. 1754, 1760, 138 L.Ed.2d 45 (1997); *Hisquierdo v. Hisquierdo*, 439 U.S. 572, 581, 99 S. Ct. 802, 59 L.Ed.2d 1 (1979)).[13]

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[13] Furthermore, as other courts have noted, "[b]lindly paying the proceeds as specified in the [plan documents] would be inconsistent with the statutory preemption exception that recognizes the validity of domestic relations orders affecting beneficiary designations." *See, e.g., Carland v. Metropolitan Life Ins. Co.*, 935 F.2d 1114, 1121 (10th Cir. 1991). Similarly, contrary to Donna's assertions here, holding that RCW 11.07.010 is not preempted will not complicate the administration of ERISA-covered plans in Washington. "ERISA already requires an administrator of a pension plan to investigate the marital history of a participant and determine whether a domestic relations order exists that could affect the

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As the final step of preemption analysis, the *Emard* court noted that Congress has not completely occupied this field such that state laws are preempted. *Emard*, 153 F.3d at 960-61 (citing *Boggs*, 117 S. Ct. at 1760). "Congress pre-empted state laws relating to *plans*, rather than simply to *benefits*." *Coyne*, 482 U.S. at 11.

Because California's law does not regulate ERISA plans (other than operating to redesignate the beneficiary), the *Emard* court found that ERISA did not bar application of state law. *Emard*, 153 F.2d at 961. The Ninth Circuit believed that "Congress did not preempt state rules" with regard to alternate distribution of insurance proceeds: "State community property laws 'implement policies and values lying within the traditional domain of the states.'" *Emard*, 153 F.3d at 961 (citing *Boggs*, 117 S. Ct. at 1760).

Courts therefore require that

> State family and family-property law must do "major damage" to "clear and substantial" federal interests before the Supremacy Clause will demand that state law by overridden.

Hisquierdo, 439 U.S. at 581. ERISA does not preempt application of state laws that merely redesignate the beneficiary under an ERISA plan, because such laws do not do "major damage" to a "clear and substantial" federal interest. *Emard*, 153 F.3d at 961.

While we are not bound by the Ninth Circuit's interpretation of ERISA preemption,[14] we find it persua-

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[Footnote continued from previous page]

distribution of benefits." *Carland*, 935 F.2d at 1122. Compliance with RCW 11.07.010 requires no more.

[14] Even where the matter is one of federal law, Washington courts are not bound by the interpretations of non-constitutional federal law rendered by inferior courts – even

[Footnote continued on next page]

sive and adopt its analysis in *Emard*. *Emard* is consistent with the United States Supreme Court's current interpretation of ERISA preemption. The Supreme Court's recent cases indicate that ERISA preemption has been much too broadly construed in the past and must be narrowed; *Emard* follows that directive in a principled, logical manner. Although *Emard* addresses only life insurance, the same principle should apply to pension fund benefits.

We therefore hold that, under the circumstances of the case before us, ERISA does not preempt RCW 11.07.010, a statute similar to the one at issue in *Emard*.[15] Consequently, under the plain language of the statute, the children are entitled to the proceeds of their father's pension fund, which have not yet been distributed. They are also entitled to the insurance proceeds.

But whether they can look to the insurer for this amount depends on whether the children demanded the insurance proceeds in compliance with the requirements of RCW 11.07.010.[16] If they did not comply with RCW 11.07.010, the children will not be able to recover the

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the Ninth Circuit. *State v. Barefield*, 110 Wn.2d 728, 732 n.2, 756 P.2d 731 (1988); *Amalgamated Clothing Workers of Am. V. Richman Bros.*, 348 U.S. 511, 75 S. Ct. 452, 99 L.Ed. 600 (1955).

[15] Although statutes similar to RCW 11.07.010 have been found to be preempted, all of those cases arose before the Supreme Court announced its new reasoning with regard to ERISA preemption. *See, e.g., Metropolitan Life Ins. Co. v. Pressley*, 82 F.3d 126 (6th Cir. 1996).

[16] The plan administrator must have actual knowledge of dissolution and/or conflicting claims for proceeds of a given policy before being liable for the decision to make payment to the named beneficiary. RCW 11.07.010(3).

insurance proceeds from the insurer, but instead will have to look solely to Donna for the funds.[17] RCW 11.07.010(3).

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[17] As Donna notes, seemingly the most relevant Washington case is *Aetna Life Ins. Co. v. Wadsworth*, 102 Wn.2d 652, 689 P.2d 46 (1984). *Wadsworth* involved a remarried man dying while his ex-wife was still designated as beneficiary of his life insurance policy. The woman to whom he was married at the time of his death opposed his ex-wife's collecting under the policy. Without mentioning ERISA, the court ruled:

> In general, the beneficiary named in the policy will be entitled to the proceeds to the extent that the present spouse's community property rights are not invaded. We believe this general rule should not apply, however, where the dissolution decree clearly indicates an intent to divest the former spouse of his or her expectancy as beneficiary, so long as that intention is acted upon within a reasonable time after dissolution by formal execution of the change of beneficiary. If the intention is not acted upon within a reasonable time [conclusive presumption after one year after date of dissolution], the owner should be deemed to have decided to retain the named beneficiary as the one entitled to the proceeds.

Wadsworth, 102 Wn.2d at 662. The court added, "if the insured spouse dies within a reasonable time period without formally executing the previously stated intention to change the beneficiary, the former spouse will not be entitled to the proceeds." *Wadsworth*, 102 Wn.2d at 663.

Because the Egelhoff divorce decree did not mention life insurance policy, Donna could arguably be entitled to the insurance proceeds under *Wadsworth*. But whether *Wadsworth* is still good law is highly questionable on two grounds: (1) the opinion does not mention ERISA (and seems to have concerned an ERISA-covered policy, given that it was "paid in full on a monthly basis as a benefit of employment by the Boeing Company." *Wadsworth*, 102 Wn.2d at 654); and (2)

[Footnote continued on next page]

We reverse summary judgment granted to Donna and remand for entry of summary judgment for the children with regard to the pension plan and life insurance proceeds.[18]

/s/
Hunt, J.

We concur:

/s/
Bridgewater, J.

/s/
Armstrong, J.

[Footnote continued from previous page]
RCW 11.07.010 was not in existence at the time of the Wadsworth decision (RCW 11.07.010 was originally enacted by Laws of 1993, ch. 236, § 1). As a result, we look elsewhere, namely, the Ninth Circuit's opinion in *Emard*, for a contemporary analysis.

[18] Donna is clearly liable to the children for the insurance proceeds. But a determination, under RCW 11.07.010, of whether the children can look to the insurer for the life insurance benefits erroneously paid to Donna, or whether they can look only to Donna herself for reimbursement of the funds she wrongfully received, cannot appropriately be made as part of the present action. Because the insurer, Aetna, is not a party to this case, the children will have to bring a separate action against Aetna should they seek to recover from it the proceeds wrongly paid to Donna.

APPENDIX C

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
COUNTY OF PIERCE

IN THE MATTER OF THE ESTATE OF DAVID A. EGELHOFF, Deceased.	NO. 94-4-01619-1 ORDER GRANTING MOTION FOR SUMMARY JUDGMENT OF DONNA R. EGELHOFF

THIS MATTER coming before the undersigned judge on July 27, 1997 on cross motions for summary judgment filed on behalf of the Estate of David A. Egelhoff for the benefit of Samantha Egelhoff and David Egelhoff, Jr. ("Petitioner") by their attorney, Michael Jordan of Jordan, Imler & McGovern, P.S. and on behalf of Donna Rae Egelhoff ("Respondent") by her attorneys, Henry Haas and Ryan Rein of McGavick Graves, P.S.; the court having heard the oral argument of counsel and having considered the following:

1. The stipulated facts as set forth in the Petitioner and Respondent's memorandums in support of their respective motions for summary judgment;

2. The memorandum in support of the motion for summary judgment of the Petitioner;

3. The Respondent's memorandum of authorities in opposition to Petitioner's motion and in support of Respondent's motion for summary judgment; and

The court finding that there is no genuine disputed material issue of fact and concluding that the Petitioner's motion for summary judgment should be denied and Respondent's motion for summary judgment should be granted. Now, therefore, it is hereby

ORDERED that the motion for summary judgment of the Petitioner, the Estate of David A. Egelhoff and the surviving children, David A. Egelhoff, Jr. and Samantha Egelhoff, be, and the same is hereby denied; it is further

ORDERED that the motion for summary judgment of the Respondent Donna Rae Egelhoff, be, it is hereby granted. It is further

ORDERED that the injunction entered herein on December 5, 1994, be, it is hereby dissolved and of no further force or effect; it is further

ORDERED that the Boeing Company Voluntary Investment Plan ("VIP") of David Egelhoff, deceased, social security number 569-70-6114, should be administered in accordance with the Employment Retirement Income Security Act of 1974 ("ERISA") and that the designated beneficiary, Donna Rae Egelhoff shall have all legal rights thereto; it is further

ORDERED that neither Petitioner or Respondent shall be awarded or recover any attorney's fees or costs in this matter.

DONE IN OPEN COURT THIS 8th Day of August, 1997.

/s/
JUDGE KAREN STROMBOM

* * * * *

APPENDIX D

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
COUNTY OF PIERCE

SAMANTHA EGELHOFF, a minor by and through her natural parent KATE BREINER, and DAVID EGELHOFF, a single person, Plaintiffs, vs. DONNA RAE EGELHOFF, and "JOHN DOE" EGELHOFF, wife and husband, Defendants.	No. 96-2-12626-3 SUMMARY JUDGMENT

THIS MATTER having come before the undersigned Judge on October 10, 1997 upon the Defendant's Motion for Summary Judgment against the Plaintiffs, and each of them; Plaintiffs being represented by their attorney, MICHAEL W. JORDAN of JORDAN, IMLER & McGOVERN, P.S., and the Defendant, DONNA RAE EGELHOFF, being represented by her attorney, HENRY HAAS of McGAVICK GRAVES, P.S., and the Court having considered the following:

1. The facts as set forth in Defendant's Memorandum of Authorities in Support of Motion for Summary Judgment;
2. Defendant's Motion for Summary Judgment;
3. Declaration of Henry Haas in Support of Defendants' Motion for Summary Judgment;
4. Memorandum in Support of Defendants' Motion for Summary Judgment;

5. Certified Statement of Counsel in Opposition to Defendants' Motion for Summary Judgment;
6. Plaintiffs' Objection to Defendants' Exhibits;
7. Second Certified Statement of Michael W. Jordan;
8. Defendant's Response to Plaintiffs' Objection to Defendant's Exhibits; and
9. Defendant's Response to Plaintiffs' Memorandum in Opposition to Motion for Summary Judgment;

and the Court having considered the same, and finding that there are no genuine issues as to any material fact and that the moving party is entitled to a judgment as a matter of law; now, therefore, it is hereby

ORDERED, ADJUDGED AND DECREED that the Defendant's Motion for Summary Judgment against the Plaintiffs is hereby **GRANTED**. It is further

ORDERED, ADJUDGED AND DECREED that the Boeing Company Life Insurance Plan of David Egelhoff, deceased, social security number 569-70-6114, should be administered in accordance with the Employment Retirement Income Security Act and the designated beneficiary, Donna Rae Egelhoff shall have all legal rights to the proceeds which have been paid thereto.

DONE IN OPEN COURT this 10th day of October, 1997.

/s/
JUDGE

* * * * *

APPENDIX E

No. 67626-7
(Court of Appeals Nos. 22293-1-II
& 22562-0-II (Consolidated)

Supreme Court of the
State of Washington

IN THE MATTER OF THE ESTATE OF DAVID A. EGELHOFF, deceased

DONNA RAE EGELHOFF and "JOHN DOE" EGELHOFF, wife and husband,

Petitioners,

v.

SAMANTHA EGELHOFF, a minor, by and through her natural parent KATE BREINER; and DAVID EGELHOFF, a single-person,

Respondents.

SECRETARY OF LABOR'S BRIEF AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

* * * * *

INTEREST OF THE SECRETARY OF LABOR

The Secretary of Labor ("the Secretary") is charged with the mandate of interpreting and enforcing the provisions of Title I of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. § 1001 et seq. As the federal officer with primary enforcement authority for numerous ERISA provisions, the Secretary has a strong interest in ensuring that preemption principles are applied appropriately by the courts. See Donovan v. Cunningham, 716 F.2d 1455 (5th Cir. 1983), cert. denied, 467 U.S. 1251 (1984). The Secretary's interests also include promoting uniformity of law, protecting beneficiaries, enforcing fiduciary standards, and ensuring the financial stability of employee benefit plan assets. Secretary of Labor v. Fitzsimmons, 805 F.2d 682 (7th Cir. 1986) (en banc).

The Appeals Court held that ERISA does not preempt a Washington Probate Statute, RCW 11.07.010, that automatically revokes a divorced spouse's beneficiary designation under his or her ex-spouse's ERISA pension and welfare plans. If left standing, the Appeals Court's decision would subject plans to a multiplicity of regulation varying with each state and prevent the nationally uniform administration of employee benefit plans that ERISA intended. New York State Conference of Blue Cross & Blue Shield Plans v. Travelers, 514 U.S. 645, 657, 115 S. Ct. 1671, 1677-78, 131 L.Ed.2d 695 (1995).

Because of the adverse impact that Appeals Court's rulings will have on laws that are in the public interest, the Secretary submits her brief to bring these important interests to the Court's attention. The Supreme Court's decision in this case is likely to have a significant impact on the development of the law in this important area.

STATEMENT OF THE CASE

The Secretary adopts the statement of the case set forth in the Petition for Review. For clarification, the parties to this action are referred to throughout the brief in the following manner. The Respondents, the children of Mr. Egelhoff and his first wife, are hereinafter referred to as the "children", and the Petitioner, Mr. Egelhoff's second wife, is hereinafter referred to as "Mrs. Egelhoff".

ARGUMENT

ERISA is a "comprehensive statute designed to promote the interests of employees and their beneficiaries in employee benefit plans." Shaw v. Delta Air Lines. 4G3 U.S. 85, 90, 103 S. Ct. 2890, 2896, 77 L.Ed.2d 490 (1983). ERISA establishes the regulation of employee benefit plans "as exclusively a federal concern." Travelers, 514 U.S. at 656. ERISA's general preemption clause, Section 514(a), preempts "any and all State laws insofar as they . . . relate to any employee benefit plan." (emphasis added). The Supreme Court instructs that courts should look "to the objectives of the ERISA statute as a guide to the scope of the state law the Congress understood would survive." Id. at 656; Id. at 1677.

"The basic thrust of the preemption clause . . . was to avoid a multiplicity of regulation in order to permit nationally uniform administration of employee benefit plans." Travelers, 514 U.S. at 657. If a state law does not threaten that goal, it is not preempted by § 514(a). However, state laws that subject plans to "a multiplicity of regulation" are preempted.

A court need not determine whether the "relate to" language of Section 514 supports preemption; however, where the state law "conflicts with the provisions of ERISA or operates to frustrate its objectives." Boggs v. Boggs, 520 U.S. 833, 941, 117 S. Ct. 1754, 1760, 138 L.Ed.2d 45 (1997). "In the face of [a] direct clash between state law and the provisions and objectives of ER-

ISA. the state law cannot stand." Boggs, 520 U.S. at 944. See also John Hancock Mut. Life Ins. Co. v. Harris Trust & Sav. Bank, 510 U.S. 86, 100, 114 S. Ct. 517, 526, 126 L.Ed.2d 524 (1993) ("[I]n the case of a direct conflict, federal supremacy principles require that state law yield").

As outlined more fully below, RCW 11.07.010 is preempted as applied to the pension plan, even in the absence of Section 514, because it conflicts with ERISA's anti-alienation and QDRO provisions. Although RCW 11.07.010 does not conflict with any ERISA provisions governing welfare plans, it is also preempted as applied to both the pension and welfare plan by Section 514 because it "relates to" such plans.

I. RCW 11.07.010 IS PREEMPTED WITH RESPECT TO THE 401(K) PLAN BECAUSE IT CONFLICTS WITH ERISA.

ERISA governs, with breadth and detail, the rights of pension plan participants and beneficiaries, as well as the obligations of the plan with respect to the payment of benefits. Among those rights is the right of the beneficiary, protected by ERISA's anti-alienation provision, actually to receive the benefits from the plan. And among the rights and obligations are a number of carefully focused provisions requiring that pension benefits be paid, in specific circumstances, to particular individuals, i.e., surviving spouses or named beneficiaries.

The 401(k) plan is governed by ERISA's anti-alienation provision which specifies that "[e]ach pension plan shall provide that benefits provided under the plan may not be assigned or alienated." 29 U.S.C. § 31056(d)(1). The anti-alienation provision was intended to ensure that the participant in, or beneficiary of, a retirement plan actually receives the benefits to which he or she is entitled. See H.R. Rep. No. 807, 93d Cong., 2d Sess. 68 (1974). Congress intended by that provision "to safeguard a stream of income for pensioners (and

their dependents)" and to ensure that pension benefits are not diverted to others. Guidry v. Sheet Metal Workers Nat'l Pension Fund, 493 U.S. 365, 37G, 110 S. Ct. 680, 687, 107 L.Ed.2d 872 (1990). See also Boggs, 520 U.S. at 651.

ERISA, as amended by the Retirement Equity Act of 1984 ("REA"), Pub. L. No. 98-357, SB Stat. 1426, establishes important rights to pension benefits for the surviving spouse of a participant. For example, ERISA Section 205(a), as amended by BEA, 29 U.S.C. § 1055(a), requires all defined benefit plans. and most defined contribution plans, to provide an annuity for a surviving spouse.

In addition, ERISA, as amended by REA, has a specific provision intended to ensure the equitable treatment of divorced spouses of participant. in pension plans. Boggs, 520 U.S. at 847. ERISA requires a plan to pay a participant's pension benefits to an alternate payee in accordance with a state "domestic relations order" if the order meets the detailed requirements that ERISA prescribes for a qualified domestic relations order ("QDRO"). 29 U.S.C. § 1056(d)(3)(A).[1] ERISA provides a limited exception to the anti-alienation provision for QDROs, 29 U.S.C. S 1056(d)(3)(A), and saves them from preemption, 29 U.S.C. S 1144(b) (7). Boggs, 520 U.S. at 846.

The "limited exception" to the anti-alienation provision for QDROs, see S. Rep. No. 575, 98th Cong., 2d Sess. 19 (1984), was intended to address the serious

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[1] In order to guarantee her rights as beneficiary under the 401(k) plan, Mrs. Egelhoff could have obtained a domestic relations order and submitted it to the plan for approval as a QDRO. A QDRO would presumably removed the 401(k) plan from consideration under RCW 11.07.010.

problem facing divorced spouses who are economically dependent on their former spouses (the plan participant). Boggs, 520 U.S. at 854. Congress made clear, however, that QDROs must "meet specific requirements if they are to be honored by the plan" in order to "minimize the burden on the plan and eliminate confusion over what the court is ordering." H.R. Rep. No. 655, 98th Cong., 2d Sess., Pt. 1, at 39 (1984). Only QDROS meeting those requirements are also exempted from preemption. See Boggs, 520 U.S at 846; S. Rep. No. 575, 98th Cong. 2d Sess. 19 (1964).

ERISA thus includes special provisions to secure interests in pension benefits of surviving spouses, divorced spouses, and beneficiaries. ERISA does not, however, contain similar provisions recognizing a right to plan benefits for the participant's heirs who are not named as beneficiaries or who are not surviving spouses. Boggs, 520 U.S. at 847. The anti-alienation provision ensures that pension benefits are not diverted before they are distributed to the participant or beneficiary for whom they are intended.

In Boggs, the Supreme Court looked to the Supremacy Clause to provide the basis for the preemption of Louisiana community property law. The children of the participant/decedent and the participant/decedent's surviving spouse were competing for the decedent's pension benefits. The children inherited their mother's community property interest in the participant/decedent's plan under state law at her death. The ERISA plan, however, required the payment of benefits to the surviving spouse The Court concluded that the community property law was preempted because "in the face of [a] direct clash between state law and the provisions and objectives of ERISA, the state law cannot stand. Conventional conflict pre-emption principles require pre-emption 'where compliance with both federal and state regulations is a physical impossibility,' . . . or where state law stands as an obstacle to the

accomplishment and execution of the full purposes and objectives of Congress." Boggs, 520 U.S. at 844, quoting, Gade v. National Solid Wastes Management Ass'n, 505 U.S. 88, 98, 112 S. Ct. 2374, 2383, 120 L.Ed.2d 73 (1992).

Like the community property law in Boggs, RCW 11.07.010 directly conflicts with ERISA. The statute reads:

> Non probate assets on dissolution or invalidation of marriage
>
> (1) This section applies to all nonprobate assets, wherever situated, held at the time of entry by a superior court of this state of a decree of dissolution of marriage or a declaration of invalidity.
>
> (2) (a) If a marriage is dissolved or invalidated, a provision made prior to that event that relates to the payment or transfer at death of the decedent's interest in a nonprobate asset in favor of or granting an interest or power to the decedent's former spouse is revoked.
>
> . . .
>
> (5) As used in this section, "nonprobate asset" means those rights and interests of a person having beneficial ownership of an asset that pass on the person's death under only the following written instruments or arrangements other than the decedent's will:
>
> (a) A payable-on-death provision of a life insurance policy, employee benefit plan, annuity or similar contract, or individual retirement account.

If RCW 11.07.010 is allowed to stand, it would revoke Mrs. Egelhoff's right to receive benefits under the

401(k) plan as the named beneficiary. Such a result would be in conflict with both the anti-alienation and QDRO provisions of ERISA. Because "[s]tates are not free to change ERISA's structure and balance," RCW 11.07.010 is, therefore, preempted. Boggs, 520 U.S. at 944.

The Appeals Court completely ignored Boggs despite its obvious application to the 401(k) plan. Instead, the Appeals Court followed the Ninth Circuit's decision in Emard v. Hughes Aircraft Co., 153 F.3d 949 (9th Cir. 1998), cert. denied, 119 S. Ct. 903 (1999). Emard, however, involved a welfare plan, which is not subject to ERISA's anti-alienation and QDRO provisions. The Emard court, therefore, was not faced with a statute that directly conflicted with ERISA and the decision does not provide meaningful guidance in determining whether RCW 11.07.010 is preempted with respect to the pension plan at issue here.

II. RCW 11.07.010 IS PREEMPTED WITH RESPECT TO BOTH THE PENSION PLAN AND THE LIFE INSURANCE PLAN BECAUSE IT RELATES TO PLANS

RCW 11.07.010 is also preempted with respect to benefits payable under both the pension and welfare plans because it relates to those plans within the meaning of ERISA 5 514. A state law "relates to" a plan if it has a "connection with" or "reference to" a plan. Shaw, 463 U.S. at 96-97; Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41, 47, 107 S. Ct. 1549, 1552-53, 95 L.Ed.2d 39 (1987). ERISA preempts a state law that has a connection with an ERISA plan when it "mandate[s] employee benefit structures or their administration" or when the state law provides an "alternate enforcement mechanism." Travelers, 514 U.S. at 646. In our view, RCW 11.07.010 "relates to" ERISA plans and is therefore preempted because it affects the plans' administrative schemes.

RCW 11.07.010 is aimed at spousal designations as beneficiaries in employee benefit plans. In the event of divorce, a spousal designation as the beneficiary under the plan is automatically revoked. In contrast, the ERISA plans at issue here provide that benefits be paid to the designated beneficiary; however, if the participant wishes to change that designation, he or she may do so in writing at anytime. RCW 11.07.010 is therefore imposing an alternate administrative scheme on the plans by effecting a change to the beneficiary designation and requiring the plans to do something other than that which the plan documents require.

The Appeals Court, therefore, erred when it found that RCW 11.07.010 was not preempted by ERISA because it did not implicate or affect the administration of ERISA plans. Matter of Estate of Egelhoff, 93 Wash.App. 314, 325, 968 P.2d 924, 929 (Wash. 1998) (RCW 11.07.010 "does not affect the administration of plans; instead it affects merely the ultimate ownership of distributed benefits"). Plans have an interest in knowing who the beneficiaries are, and in not being subject to suits by other persons asserting claims to benefits. Here, in fact, the plans have held the benefits, awaiting the outcome of the litigation between the parties. Although the parties here have not sued the plans, future heirs in the parties' situation might sue a plan directly. Competing heirs from different states, asserting conflicting interests under various state laws, might also bring actions against a plan. Consequently, the plans' interest in avoiding a multiplicity of conflicting state regulation is also implicated and requires preemption.

As noted above, the Appeals Court's decision in Egelhoff finding that RCW 11.07.010 was not preempted stands alone among the other federal Appeals Courts that have decided this issue. Other courts dealing with similar statutes found them preempted by ERISA. See Brandon v. Travelers Ins. Co., 18 F.3d 1321, 1325 (5th Cir. 1994), cert. denied, 513 U.S. 1081 (1995)

(ERISA preempts state law requiring re-designation of spouses in order to maintain status as beneficiary after divorce); Krishna v. Colgate Palmolive Co., 7 F.3d 11, 15 (2d Cir. 1993) (ERISA preempts interpleader action brought under New York's probate statute, in which the parties sought to gain beneficiary status under an ERISA life insurance plan through a codicil to the participant's will); Metropolitan Life Ins. Co. v. Hanslip, 939 F.2d 904, 906 (10th Cir. 1991) (ERISA preempts statute which automatically revoked a spouse's designation as beneficiary upon divorce); MacLean v. Ford Motor Co., 831 F.2d 723, 727 (7th Cir. 1987) (ERISA preempts testamentary transfer law in determining beneficiary of testator's pension plan). For example, in Metropolitan Life Ins. Co. v. Pressley, 82 F.3d 126 (6th Cir. 1996), the court found that the state statute that required judgments of divorce to determine the rights of the non-participant ex-spouse to the ERISA life insurance plan proceeds was preempted by ERISA. The court then followed the directives of ERISA § 404(a)(1)(D) and found that the beneficiary designation form, as a plan document, required that the life insurance proceeds be paid to the ex-spouse, because she was the named beneficiary under the plan. Id. at 130. The Secretary believes that these opinions are better reasoned than Emard and should be followed.[2]

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[2] In Brandon, after finding preemption, the court resorted to the federal common law of waiver to determine the proper beneficiary. The court found waiver based on specific language in the divorce decree evidencing an intent to waive. See Brandon, 18 F.3d at 1325. The Secretary does not have a position as to whether resorting to the federal common law of waiver was appropriate in this case. However, the Court need not reach that issue here concerning the life insurance plan because there was no instrument in which the Mrs. Egelhoff even arguably purported to waive her entitlement to

[Footnote continued on next page]

In Emard, a surviving spouse sued under California's community property law, claiming an entitlement to at least half of the decedent/participant spouse's life insurance proceeds. The participant, however, never changed the life insurance plan's beneficiary designation that named her ex-husband. The Ninth Circuit held that California's community property law, which would require distribution of ERISA life insurance proceeds contrary to the participant's designation of beneficiary, was not preempted. The Ninth Circuit concluded that the participant's beneficiary designation form was not a plan document and therefore did not govern the plan's operation: "we see no indication that Congress intended to safeguard an individual beneficiary's rights to the proceeds of an ERISA insurance plan as against another person claiming superior rights, under state law, to those proceeds." Emard, 153 F.3d at 958. Finally, the Ninth Circuit in Emard held that California's community property law did not affect the administration of plans, but rather, the ultimate ownership of distributed benefits.

As stated previously, the Appeals Court's decision to follow the Emard court's preemption analysis was in error. By finding that the community property law was not preempted by ERISA, the Emard court misapplied the Supreme Court's "relates to" analysis. A state law that requires a plan to pay benefits in a manner contrary to the directives of the plan clearly affects and relates to that plan's administration. Such a law mandates the

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[Footnote continued from previous page]

benefits, rather she was divested solely by operation of RCW 11.07.010. Regarding the 401(k) plan, an argument for waiver is inconsistent with ERISA's anti-alienation provision which protects a named beneficiary's right to receive benefits under a pension plan. Such an argument for waiver would therefore conflict with ERISA and as such be preempted under the Supremacy Clause.

plan's administration in the manner in which Travelers instructs is prohibited by ERISA's preemption provision. Travelers, 514 U.S. at 646.

Preemption of RCW 11.07.010 is further supported by the "reference to" test set forth in Shaw, 463 U.S. at 96-97 (1983). RCW 11.07.010 explicitly refers to an "employee benefit plan." In Shaw, the Supreme Court found that a state law was preempted because it had "a connection with or reference to" an ERISA plan" (emphasis added). In California Div. of Labor Standards Enforcement v. Dillingham Construction, N.A., Inc., 519 U.S. 316, 325, 117 S. Ct. 832, 838, 136 L.Ed.2d 791 (1997), the Supreme Court stated that the "reference to" test is met where the state law either "acts immediately and exclusively upon ERISA plans" or "the existence of ERISA plans is essential to the law's operation." As discussed above, RCW 11.07.010 acts immediately upon the entities to which it applies, including employee benefit plans, by directly affecting the administration of such plans. Moreover, the statutory reference to employee benefit plans is essential to the law's operation because, if the term "employee benefit plan" were deleted from Section 5 (a) the statute would not operate. RCW 11.07.010 is therefore preempted under ERISA § 514(a) and the Appeals Court's decision must be reversed.

CONCLUSION

For the foregoing reasons, the Appeals Court's decision that RCW 11.07.010 is not preempted by ERISA was erroneous and should be reversed.

Dated: August 13, 1999

Respectfully submitted,

For the Secretary of Labor

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Supreme Court, U.S.
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(3)

No. 99-1529

IN THE

Supreme Court of the United States

DONNA RAE EGELHOFF,

Petitioner,

v.

SAMANTHA EGELHOFF, A Minor, By and Through Her Natural Parent Kate Breiner, and DAVID EGELHOFF,

Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Washington

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IN THE

Supreme Court of the United States

DONNA RAE EGELHOFF,

Petitioner,

v.

SAMANTHA EGELHOFF, A Minor, By and Through, Her Natural Parent Kate Breiner, and DAVID EGELHOFF,

Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Washington

---

RESPONDENTS' BRIEF IN OPPOSITION

For the following reasons, Respondents respectfully suggest that the Petition for a Writ of Certiorari should be denied.

STATEMENT

This case involves the proceeds of pension and life insurance plans (collectively, "the plans") held by David Egelhoff ("David") before his death. The plans provided that benefits would be distributed upon David's death to the named beneficiary or, if the named beneficiary predeceased David, to David's heirs. At the time that David was married to Petitioner Donna Rae Egelhoff ("Petitioner"), he named her as the beneficiary. This dispute arises because David subsequently divorced Petitioner and died soon thereafter without changing the plans' beneficiary designations. Washington state law

deems Donna to have "predeceased" an ex-spouse such as David for purposes of the disposition of all of the decedent's "nonprobate assets." RCW 11.07.010. Petitioner nonetheless claims the benefits as the plans' named beneficiary. Respondents Samantha Egelhoff and David Egelhoff, Jr. ("Respondents"), David's children by a prior marriage and his statutory heirs, claim on the ground that Petitioner "predeceased" David as a matter of state law.

After David died and Petitioner collected the life insurance benefits, Respondents filed a conversion suit in state court to recoup the benefits. Respondents also moved in the state probate proceedings regarding David's estate to collect the pension plan proceeds. The trial courts in both cases held that ERISA preempted the state law invoked by Respondents and entered summary judgment for Petitioner. In a consolidated appeal, the Washington Supreme Court reversed and remanded.

As interpreted by the Washington Supreme Court in this case, Washington state law provides that, with respect to a decedent's "nonprobate assets" (whether those assets involve ERISA plans or not), a divorce decree creates "the legal fiction that the former spouse did not survive the decedent, having died at the time of entry of the decree of dissolution." Pet. App. 21a (quoting RCW 11.07.010) (alterations omitted). The statute's obvious purposes are to discourage divorce and to prevent unjust enrichment in a case exactly like this one, where a person divorces but dies before having the opportunity to arrange for alternate disposition of nonprobate assets that would otherwise default to the divorced spouse. The Washington Supreme Court explained that although this Court had narrowed its view of ERISA preemption in a trilogy of recent decisions, Pet. App. 12a-15a (citing *DeBuono* v. *NYSA-ILA Med. & Clin. Servs. Fund*, 520 U.S. 806 (1997); *California Div. of Labor Stands. Enforce.* v. *Dillingham Constr., N.A.*, 519 U.S. 316 (1997); *New York State Conf. of Blue Cross & Blue Shield Plans* v. *Travelers Ins. Co.*, 514

U.S. 645 (1995)), preemption remains the rule when, *inter alia*, state law "mandates plan benefit structures or some aspect of their administration" and thus "directly or indirectly invades the core functions of ERISA regulation." *Id.* 20a. But, the court explained, the state law in this case does no such thing. It does not direct the award of benefits to any specific person at all, much less order the transfer of benefits from the named beneficiary to some third party. Instead, state law simply deems Petitioner to have predeceased David and directs the plans' administrators to distribute the proceeds on whatever basis the plans themselves provide in light of this legislatively determined "fact." *Id.* at 21a. That conclusion was particularly manifest in light of this Court's admonition that ERISA was not intended to supplant "the historic police powers of the States," *Dillingham*, 519 U.S. at 325, and "Washington's sovereign interest in exercising its traditional police powers in the area of domestic relations and family law," Pet. App. 15a.

Having reversed the entry of summary judgment in favor of Petitioner, the Washington Supreme Court remanded the case to the lower courts. After the remand, the pension plan administrator separately filed suit in federal district court alleging that, notwithstanding the Washington Supreme Court's decision, the plan remains obligated to distribute the funds to Petitioner as the named beneficiary. See *Boeing Co. Volun. Invest. Plan et al.* v. *Egelhoff et al.*, No. C99-2064, Complaint for Declaratory Relief and Interpleader ¶¶ 16-17 (W.D. Wash. filed Dec. 20, 1999) ("Among the fiduciary duties that the [plaintiff] Committee owes to Plan participants and beneficiaries pursuant to ERISA is the duty to comply with 'documents and instruments governing the plan.' 29 U.S.C. § 1104(a)(1)(D). The Committee submits that the decedent's beneficiary designation in favor of Donna Rae Egelhoff is such a governing document or instrument for purposes of this fiduciary duty. The Washington Supreme Court lacks jurisdiction to rule on fiduciary claims under Part 4 of Title I of

ERISA, and *its above-referenced decision therefore does not resolve whether ERISA's fiduciary duties require the Plan to pay benefits to the Egelhoff children [Respondents here]*, nor does this decision protect the Committee from potential fiduciary liability." (emphasis added)).

ARGUMENT

Certiorari should be denied. The state court judgment in question is not final and may be mooted by collateral federal court proceedings. Nor does the decision below conflict with decisions of this Court, federal courts of appeals, or state courts of last resort. Instead, it presents an infrequently recurring issue that is principally one of state law.

1. The procedural posture of these cases makes certiorari inappropriate. Petitioner asserts that this Court has jurisdiction to review the Washington Supreme Court's judgment under 28 U.S.C. § 1257(a), which applies to "[f]inal judgments or decrees rendered by the highest court of a State." But no "final judgment" has yet been entered in these consolidated cases. Instead, the Washington Supreme Court merely reversed the trial courts' entry of summary judgment in favor of Petitioner. Although Respondents believe that the court's statement that they "are entitled to receive the benefits," Pet. App. 28a, should result in the entry of a judgment in their favor, it remains to be seen whether, on remand, both of the trial courts will do so or will instead permit Petitioner to assert further defenses and/or demand a trial. See generally Robert L. Stern et al., Supreme Court Practice §§ 3.3, 3.6 (7th ed. 1993); *id.* at 94 ("The fact that the aggrieved party concedes it has nothing left to present at further proceedings in the state trial court is not decisive of the finality question, particularly where the Court is not otherwise convinced that the outcome of further proceedings is certain or will not affect the federal issues."). The dispute over the pension proceeds in particular is a subset of the larger state court probate proceedings relating to the disposition of David's entire estate.

Again, Respondents view is that the probate proceedings *should* now be closed, and indeed that may be likely, but the matter is not free from doubt. Such uncertainties, of course, are precisely the reason this Court awaits a "final judgment" before reviewing a state court ruling.

Certiorari also is inappropriate in light of the pending collateral federal court attack against the Washington Supreme Court's ruling. The federal suit brought by the plan administrator could result in a federal court judgment that Petitioner is entitled to the plans' proceeds. There is, accordingly, a real prospect that this case could moot during its pendency in this Court. See *Anderson* v. *Green*, 513 U.S. 557, 569 (1995) (per curiam) (explaining that Court was unable to reach the merits of the case before it because collateral proceeding voided the underlying governmental action (citing *Hall* v. *Beals*, 396 U.S. 45 (1969)). At the very least, assuming that the question presented merits this Court's attention at all, doubts about finality and the risk of mootness counsel in favor of awaiting a petition for certiorari from the federal court proceedings or from another case, see, e.g., *infra* note 1.

2. The decision below involves only an infrequently recurring question entirely bound up with issues of state law and does not present a conflict meriting this Court's review. The Washington Supreme Court held in this case that when Petitioner divorced David, she predeceased David as a matter of state law for purposes of receiving his "nonprobate assets," including life insurance or pension benefits (whether the proceeds of ERISA plans or not). Petitioner asserts that this issue recurs frequently, but cites to similar statutes of only *four* states and to *no* state court decisions interpreting those statutes. Pet. 24 n.7. The obvious reason is that there are few such statutes and essentially no decisions to cite. The Montana and Oklahoma state supreme courts have never even addressed their analogous statutes. The Ohio and Pennsylvania supreme courts have only ever considered whether their states' statutes may be applied retroactively, concluding that

they may not, rulings that have nothing to do with the question presented here. *Aetna Life Ins. Co.* v. *Schilling*, 616 N.E.2d 893 (Ohio 1993); *Parsonese* v. *Midland Nat'l Ins. Co.*, 706 A.2d 814 (Pa. 1998). It is not surprising that this issue is the subject of essentially no judicial authority: the question can arise only if an individual (a) lives in one of the few states with statutes providing that an ex-spouse "predeceases" a decedent for purposes of disposing of nonprobate assets, (b) holds an ERISA plan and has designated the ex-spouse as the beneficiary, and (c) divorces but dies before he or she can amend the beneficiary designation on plan documents.[1]

Petitioner therefore attempts to describe the question presented by her Petition as frequently recurring at a very high level of generality, stating that–"whether through statutes like § 11.07.010, state-law divorce decrees, testamentary transfer law, community property law, or the law of constructive trusts–numerous states have sought to impose varying and inconsistent restrictions on the ability of ERISA plan participants to designate beneficiaries in accordance with the applicable ERISA plans." Pet. 24-25 (footnote omitted). But this

[1] So far as we are aware, this issue has only ever been decided *once* prior to this case by either the state of federal courts, and that decision was nearly ten years ago, long before this Court's substantial reformulation of its ERISA preemption doctrine. *See infra* at 8-9. Division Five of the Colorado Court of Appeals has subsequently indicated its disagreement with the Washington Supreme Court's rationale in this case. *In re. MacAnally*, No. 99CA0120, 2000 Colo. App. LEXIS 561 (Mar. 30, 2000). But Colorado's statute differs materially from Washington's and the Colorado court accordingly was correct in stating that the decision below is "distinguishable." Specifically, Colorado does not deem a former spouse to have "predeceased" the plan holder but rather provides that the plan is to be administered "as if the former spouse and relatives of the former spouse disclaimed" their interests in the plan proceeds. In any event, we are advised that a petition for rehearing is pending before the Colorado Court of Appeals, and an appeal to that state's Supreme Court is anticipated. Any subsequent conflict with the decision in this case can be resolved by a Petition for a Writ of Certiorari in *MacAnally*.

is simply a back-handed concession by Petitioner that the statutes and court decisions she invokes involve "numerous," "varying" circumstances and applications of state law, not conflicting judgments on a federal issue that require this Court's intervention.

The decisions cited by Petitioner confirm the absence of any relevant conflict. All but one of the cited cases are properly distinguished because they involve divorce decrees, codicils to wills, or similar instruments, by or between private individuals, that purport to change the beneficiary designations of ERISA plans. In other words, they involve circumstances in which private parties attempt to name a particular person as the beneficiary of an ERISA plan without relying on the plans' provisions and when, in fact, the plans themselves purport to designate someone else. The courts in those cases therefore did not even consider, much less resolve, whether preemption applies when benefits still will be distributed under the plans' terms (the critical distinction on which the Washington Supreme Court's decision rests) and when the State has a substantial interest in the operation of its sovereign law. Moreover, in each, the plan administrator was required to ascertain the existence of, acquire, and interpret an individual divorce decree, will, or similar document; no such burden exists in this case. See *infra* at 10-11.[2]

[2] The only post-*Travelers* cases cited by Petitioner are *Metropolitan Life Ins. Co.* v. *Pettitt*, 164 F.3d 857, 859 (CA4 1998) (resolving the effect of a "property settlement agreement that [an ex wife] entered into with [the decedent] in connection with their divorce"); *Emard* v. *Hughes Aircraft Co.*, 153 F.3d 949, 954 (CA9 1998) (effect of allegation that decedent's "failure to alter the [plan] designation of beneficiary form was a mistake"), *cert. denied sub nom. Stencil* v. *Emard*, 525 U.S. 1122 (1999); *Mattei* v. *Mattei*, 126 F.3d 794, 796 (CA6 1997) (effect of "antenuptual agreement" which provided that spouse would receive a weekly payment but "surrendered all other claims to [the decedent's] estate"), *cert. denied*, 523 U.S. 1120 (1998); *Metropolitan Life Ins. Co.* v. *Marsh*, 119 F.3d 415, 416 (CA6 1997) (effect of a "divorce decree [that the district court incor-

Almost all of the cases cited by Petitioner, in fact, predate this Court's trilogy of decisions avowedly narrowing the breadth of ERISA preemption: *DeBuono* v. *NYSA-ILA Med. & Clin. Servs. Fund*, 520 U.S. 806 (1997); *California Div. of Labor Stands. Enforce.* v. *Dillingham Constr., N.A.*, 519 U.S. 316 (1997); *New York State Conf. of Blue Cross & Blue Shield Plans* v. *Travelers Ins. Co.*, 514 U.S. 645 (1995) ("*Travelers*").[3] And, only one pre-*Travelers* decision of the

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rectly found] did not constitute a qualified domestic relations order ('QDRO')").

[3] *Metropolitan Life Ins. Co.* v. *Pressley*, 82 F.3d 126, 128 (CA6 1996) (resolving the effect of a "Divorce Decree [that] does not qualify as a domestic relations order expressly exempt from ERISA preemption"), *cert. denied*, 520 U.S. 1263 (1997); *Equitable Life Assur. Soc.* v. *Crysler*, 66 F.3d 944, 946 (CA8 1995) (effect of a "divorce decree that allegedly prohibited beneficiary changes"); *Brandon* v. *Travelers Ins. Co.*, 18 F.3d 1321, 1322 (CA5 1994) (effect of a "divorce decree [that] provided that each spouse would separately retain his or her own employment benefits"), *cert. denied*, 513 U.S. 1081 (1995); *Krishna* v. *Colgate Palmolive Co.*, 7 F.3d 11, 13 (CA2 1993) (effect of a "Codicil superseding [a prior will] and the revocation of the power of attorney previously granted"); *Ablamis* v. *Roper*, 937 F.2d 1450, 1452 (CA9 1991) (effect of an attempt by "a wife who dies while her husband is still living [to] leave half his current or future pension benefits to a third party in her will"); *Brown* v. *Connecticut Gen. Life Ins. Co.*, 934 F.2d 1193, 1194 (CA11 1991) (effect of divorce decree that "provided '[t]hat the Defendant [Stirling Brown] shall keep the Plaintiff [Katharine Brown] as beneficiary on the life insurance now in effect on his life for as long as she remains unmarried" (alterations in original)); *McMillan* v. *Parrott*, 913 F.2d 310, 311 (CA6 1990) (effect of divorce settlement which "contained a broad waiver clause in which each spouse relinquished 'any and all' claims he or she might have against the other"), *reh'g granted*, 922 F.2d 841 (CA6 1990) (remanding case for proceedings consistent with initial opinion); *Fox Valley & Vicinity Constr. Workers Pension Fund* v. *Brown*, 897 F.2d 275, 278 (CA7) (effect of "marital property settlement agreement in which Laurine seemingly waived her right to any benefits from the Fund"), *cert. denied*, 498 U.S. 820 (1990); *MacLean* v. *Ford Motor Co.*, 831 F.2d 723, 725 (CA7 1987) (question whether plan "assets pass with the residue of the decedent's estate under the terms of his will or whether the [plan] assets are distributed to the designated beneficiary of his life insurance pol-

Tenth Circuit involves a state law that parallels the Washington statute in this case. *Metropolitan Life Ins. Co.* v. *Hanslip*, 939 F.2d 904 (CA10 1991). With all due respect to the one dissenting judge cited by Petitioner who disagrees, Pet. 15 (citing *Emard* v. *Hughes Aircraft Co.*, 153 F.3d 949 (CA9 1998) (Hall, J., dissenting), *cert. denied sub nom. Stencil* v. *Emard*, 525 U.S. 1122 (1999)), the courts uniformly have acknowledged that this Court's *Travelers* decision and its progeny represent a marked change in the application of ERISA preemption. Of note, the Washington Supreme Court made clear that it would have ruled in Petitioner's favor prior to *Travelers*, Pet. App. 12a, 15a, 27a, and it remains to be seen whether the courts cited by Petitioner will adhere to their earlier holdings (all but one of which in any event relate to inapposite state laws). It is to be expected that in the wake of such a substantial change in this Court's approach to ERISA preemption some disagreements would emerge in the lower courts that are fully capable of resolution over time without this Court's further intervention.

The distinctions between the Washington Supreme Court's decision and the rulings cited by Petitioner make this case an inappropriate vehicle to resolve any supposed broader conflict regarding whether and when state law may "displace" ERISA plan beneficiary designations. The Washington Supreme Court's construction of RCW 11.07.010 as merely creating the "fiction" that Petitioner "predeceased" David is for all purposes binding on this Court and accordingly is the premise on which this case would have to be decided. The

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icy in accordance with the terms of the employee pension plan"); *Stackhouse* v. *Russell*, 447 N.W.2d 124, 124 (Iowa 1989) (effect of a "dissolution of marriage decree" which "directed the husband to provide life insurance (death benefits under a collective bargaining agreement) in favor of the two daughters of the parties"); *Brown* v. *Brown by Beacham*, 422 S.E.2d 375, 379 (Va. 1992) (question whether ex-spouses "notarized waiver was insufficient to constitute the required notarized spousal consent" to change designation).

cases cited by Petitioner, by contrast, involve different effects on plan designations and plan administration.

We can illustrate this point by reference to so called "slayer" statutes, which provide that an individual who causes the death of his or her spouse may not then receive the spouse's assets. Although such statutes displace the beneficiary designations of ERISA plans, no one even suggests that such statutes are preempted by ERISA. See IRS Letter Ruling 8908063 (Nov. 30, 1988). That presumably is so because (a) the state has a substantial interest in discouraging spousal homicide, and (b) such statutes impose only a minor burden on ERISA plan administrators. The same rationales underlie the ruling below that the Washington statute in this case is not preempted by ERISA. A decision on such issues is unlikely to illuminate, much less resolve, a disagreement over the circumstances in which private agreements and testamentary devices, or other unrelated state laws, may alter ERISA plan designations. If the broad conflict asserted by Petitioner merits resolution by this Court, certiorari should be granted in a case that directly presents the issue, as in a dispute over the effectiveness of a divorce decree or will codicil. See *supra* notes 2, 3.

3. The decision below is absolutely faithful to this Court's precedents. The decision below carefully analyzes this Court's precedents. In particular, the Washington Supreme Court was cognizant of this Court's change in approach to ERISA preemption in *Travelers* and its progeny. At the same time, the court recognized the continuing breadth of preemption doctrine, holding that state law is invalid if it "mandates plan benefit structures or some aspect of their administration" and thus "directly or indirectly invades the core functions of ERISA regulation." Pet. App. 20a.

Petitioner asserts that the decision below nonetheless conflicts with *Boggs* v. *Boggs*, 520 U.S. 833 (1997). That is not correct. The question in *Boggs* was whether ERISA preempted an attempt "to transfer by testamentary instrument an

interest in undistributed pension plan benefits." 520 U.S. at 836. The applicable ERISA provision granted a surviving spouse a "statutory entitlement to an annuity," which Louisiana community property law purported to trump by permitting a testamentary transfer to a third party. *Id.* at 843-44. Such an arrangement, the Court held, flatly contradicted ERISA's anti-alienation provision. But as the Washington Supreme Court explained, no such concern arises in this case. A prohibited "assignment or alienation" occurs only through an "arrangement whereby a party acquires *from a participant or beneficiary* an interest enforceable against a plan." *Boggs*, 520 U.S. at 852 (alterations omitted). Neither David nor Petitioner transferred any interest to Respondents, who are entitled to benefits only under the terms of the plans themselves, just as if Petitioner had actually predeceased David. And the rationale behind the anti-alienation provision–ensuring that a beneficiary is not deprived of benefits without his or her knowledge and consent–is completely absent in this case as well: Petitioner was perfectly cognizant of the effect of her divorce from David (and indeed the divorce decree expressly granted David 100% of the pension plan proceeds); to allow Petitioner to collect benefits would simply facilitate her unjust enrichment.

Nor does the decision below conflict with the principle that ERISA preempts state laws that "mandate employee benefit structures or their administration," *Travelers*, 514 U.S. at 658. Any suggestion that the decision below imposes a substantial burden on ERISA plan administrators is seriously overblown. As noted, Respondents are entitled to receive benefits only based on the terms of the plans themselves. Furthermore, Petitioner acknowledges that, prior to disbursing benefits, a plan administrator must determine (a) whether the plan beneficiary had divorced from the decedent, and (b) whether that divorce was embodied in a qualified domestic relations order ("QDRO"). In the State of Washington, the inquiry simply *stops* at step (a) and the plan administrator

treats the named beneficiary as if he or she already had died. This is hardly a "complex set of requirements varying from State to State," *Boggs*, 520 U.S. at 851, that merits invoking ERISA to invalidate a sovereign state law.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

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IN THE

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DONNA RAE EGELHOFF,

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SAMANTHA EGELHOFF, A Minor, By And Through Her Natural Parent Kate Breiner, And DAVID EGELHOFF,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of Washington

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In response to Petitioner's compelling showing that certiorari is warranted here, Respondents raise meritless jurisdictional objections and make a wholly unpersuasive attempt to deny the significance of the widespread circuit conflict acknowledged by the courts below. As Justice O'Connor recognized in granting Petitioner's application for a stay in this case (*see* No. 99A803 (April 7, 2000)), and as the broad base of amicus curiae support for the petition confirms, Respondents' objections are meritless, and certiorari should be granted.

I. Jurisdiction Is Proper In This Case

Respondents assert that "no 'final judgment' has been entered" below because "it remains to be seen" whether the state trial court will comply with the mandate of the Supreme Court of Washington awarding Respondents the ERISA plan benefits at issue here. Opp. 4. Respondents' finality argument is without merit.

The court below squarely and unambiguously held that "Respondents . . . are entitled to receive the benefits under [David Egelhoff's] pension plan and the proceeds of his life insurance." Pet. App. 28a; *see also id.* at 17a ("Respondents . . . are entitled to the proceeds of [the] employment-based life insurance policy."); *id.* at 27a; *id.* at 28a ("Respondents were properly awarded the benefits under their father's pension plan."). As between the parties to this case, therefore, there is nothing more to be decided, and the judgment below is final.

Respondents' assertion to the contrary appears to rest on the mistaken notion that a state appellate court's judgment is not final if it leaves to the state trial court the ministerial task of enforcing the mandate of the appellate court. Respondents misconceive the nature of the finality requirement. The law is clear that a state supreme court's judgment is not deprived of finality merely because the state trial court retains authority to implement the appellate court's mandate. *See, e.g., Duquesne Light Co. v. Barasch,* 488 U.S. 299, 306-07

(1989) (finality requirement satisfied where "all that remains is the straightforward application of [the state appellate court's] clear directive . . . ."); *Pope v. Atlantic Coast Line R.R. Co.*, 345 U.S. 379, 382 (1953) (finality requirement satisfied where "nothing remains to be done but the mechanical entry of judgment by the trial court"); *see generally* R. STERN ET AL., SUPREME COURT PRACTICE § 3.6 (7th ed. 1993).

Respondents hypothesize that Petitioner may "assert further defenses and/or demand a trial" in the trial court (Opp. 4), but their speculation in this regard is baseless. The reality is that Petitioner did not attempt to raise any new issues on remand, nor could she have done so in view of the clarity of the state supreme court's mandate. Respondents offer no specifics to justify their fanciful suggestion that new issues may remain to be litigated below, and for good reason: None exist. The judgment below is final, and Respondents' speculation to the contrary does not change that fact.[1]

Respondents also err in contending that the interpleader action filed by the Boeing pension plan could hypothetically render this case moot. That federal-court action cannot possibly change the state supreme court's

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[1] Even if it were theoretically possible for Petitioner to raise new defenses in the trial court—which it is not—the judgment below would still be final, because Petitioner has no intention of making any such effort. *See* SUPREME COURT PRACTICE § 3.3 at 94 ("finality may be achieved if the parties dismiss or otherwise relinquish the remaining issues that would preclude finality"). Thus, the finality requirement is satisfied here because "the federal issue, finally decided by the highest court in the State, will survive and require decision regardless of the outcome of future state-court proceedings." *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 480 (1975); *see also NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 907 n.42 (1982).

final ruling in favor of Respondents, which (absent review by this Court) is binding on Petitioner and must be given full faith and credit in the federal courts. *See* 28 U.S.C. § 1738. Moreover, the pension plan's complaint does not (and could not) seek to relieve Petitioner of the binding effects of the judgment below, but instead merely seeks guidance regarding the plan's fiduciary obligations. Lodging, tab A.[2] And in any event, the Boeing pension plan has already made clear its intention not to prosecute the interpleader action. Indeed, the plan filed a notice of voluntary dismissal on January 28, 2000. Lodging, tab B.[3] Thus, Respondents' mootness theory is entirely without merit.

II. This Case Squarely Presents The Issues That Divide The Circuits

Respondents do not challenge Petitioner's showing that the lower state and federal courts are sharply divided over the question whether ERISA preempts state laws that purport to override ERISA beneficiary designations. Pet. 8-19. Respondents nonetheless contend that certiorari should be denied because the first question presented in the petition arises in a variety of factual settings and implicates a number of state laws, including not only statutes like § 11.07.010 but also other state probate laws, divorce laws, community property laws, and common law doctrines. Opp. 5-7.

Far from justifying a denial of certiorari in this case, however, the fact that the question presented implicates

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[2] "Lodging" refers to Petitioner's lodging of district court pleadings with the Clerk for the convenience of the Court.

[3] The district court has not acted upon the plan's voluntary dismissal, presumably because the court stayed all proceedings in the interpleader action pending resolution of Petitioner's bankruptcy. Lodging, tab C.

a number of different state laws and arises in a wide array of factual settings provides a compelling reason for *granting* certiorari, because it demonstrates the widespread significance and recurring nature of the question. The creativity of litigants seeking to evade the effect of ERISA beneficiary designations is virtually limitless, as the cases cited in the petition attest, but at bottom the question in each of these cases is the same: Does ERISA permit state law to nullify beneficiary designations made in accordance with the terms of ERISA plans? That question demands an answer, and this case offers a perfect vehicle for providing one.

Contrary to Respondents' suggestion (Opp. 6), moreover, this case squarely presents the preemption issue at the same "level of generality" as the numerous cases cited in the petition. Virtually *all* of the conflicting authorities describe the fundamental issue in precisely the terms used by Petitioner, *regardless* of which state-law mechanism is being used in an attempt to override an ERISA beneficiary designation.[4]

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[4] *Compare, e.g.*, Pet. App. 25a (§ 11.07.010 "invalidates designation of a former spouse as beneficiary of" an ERISA plan); *Emard v. Hughes Aircraft Co.*, 153 F.3d 949, 956 (9th Cir. 1998) (stating question presented as "whether ERISA preemption bars application of state law that would require the distribution of ERISA insurance proceeds to a person other than the designated beneficiary"), *cert. denied*, 525 U.S. 1122 (1999); *with, e.g., Krishna v. Colgate Palmolive Co.*, 7 F.3d 11, 15 (2d Cir. 1993) ("[b]ecause the designation of beneficiaries to [a] life insurance policy 'relates to' the ERISA plan, the preemption provision applies") (citation omitted; emphasis eliminated); *Metropolitan Life Ins. Co. v. Pettit*, 164 F.3d 858, 862 (4th Cir. 1998) ("designating the beneficiary of an ERISA life insurance plan sufficiently relates to a plan to come within the scope of the preemption clause"); *Brandon v. Travelers Ins. Co.*, 18 F.3d 1321, 1325

[Footnote continued on next page]

Respondents argue that "[a]ll but one of the cited cases are properly distinguished" because they involve attempts by private parties to override ERISA plan beneficiary designations. Opp. 7. This proffered distinction is meaningless, however, because in each of the cited cases the party seeking to evade the beneficiary designation was relying on the force of *state law* in an effort to override the terms of the applicable ERISA plan—precisely what Respondents are attempting to do (and what the court below authorized) here.[5]

[Footnote continued from previous page]
(5th Cir. 1994) ("the designation of a beneficiary 'relates to' the provision of an ERISA plan to a sufficient degree to be preempted by that statute"); *Metropolitan Life Ins. Co. v. Marsh*, 119 F.3d 415, 420 (6th Cir. 1997) ("the designation of beneficiaries has a connection with or reference to an ERISA plan, thereby preempting state law"); *MacLean v. Ford Motor Co.*, 831 F.2d 723, 728 (7th Cir. 1987) ("When, as here, the terms of an employee pension plan under ERISA provide a valid method for determining the beneficiary, that mechanism cannot be displaced by the provisions of [state law]."); *Equitable Life Assurance Soc'y v. Crysler*, 66 F.3d 944, 948 (8th Cir. 1995) ("ERISA preemption makes the designation of plan beneficiaries and the determination of who is entitled to plan benefits questions of federal law."); *Metropolitan Life Ins. Co. v. Hanslip*, 939 F.2d 904, 906 (10th Cir. 1991) ("Because the designation of beneficiaries to this life insurance policy 'relates to' the ERISA plan, the preemption provision applies."); *Brown v. Connecticut Gen. Life Ins. Co.*, 934 F.2d 1193, 1195 (11th Cir. 1991) ("[t]he determination of the beneficiary of the proceeds of an insurance policy plainly relates to an employee benefit plan") (citation omitted).

[5] Respondents also undercount the number of cases striking down statutes like § 11.07.010. *See Brandon*, 18 F.3d at 1323-25 (ERISA preempts Texas statute providing that "a life insurance plan participant must redesignate an ex-spouse

[Footnote continued on next page]

Significantly, the Secretary of Labor agrees with Petitioner's submission that the judgment below directly conflicts with the authorities cited in the petition. *See* Pet. App. 57a-58a ("[o]ther courts dealing with similar statutes [have] found them preempted by ERISA," citing *Brandon*, *Krishna*, *Hanslip*, *MacLean*, and *Pressley*). Similarly, the court below acknowledged the relevance of the conflicting authorities cited in the petition (Pet. App. 22a & n.97), and relied heavily on the Ninth Circuit's decision in *Emard v. Hughes Aircraft Co.*—a precedent that, under Respondent's view, would have been irrelevant, because it involved the use of state-law principles of constructive trust and community property (rather than a statute identical to § 11.07.010) to override an ERISA beneficiary designation. *See* Pet. App. 18a, 22a, 37a-42a; *Emard*, 153 F.3d at 954-61.

Indeed, in their briefs below, Respondents themselves recognized that this case presents precisely the same legal issue as *Emard*. *See* Resp. Supp. Br. in Wash. Sup. Ct. at 13 (June 30, 1999) ("The Issue Analyzed By The Ninth Circuit In *Emard* Is Identical To The Issue Before This Court"). And *Emard* itself acknowledged that its holding conflicts with and involves the same issue as the circuit court decisions cited by Petitioner. 153 F.3d at 956. Thus, Respondents' attempt to distinguish the cases cited in the petition is refuted by the language and reasoning of those cases, by the Secre-

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[Footnote continued from previous page]
after divorce in order to maintain that ex-spouse as the designated beneficiary"); *Hanslip*, 939 F.2d at 906 (ERISA preempts Oklahoma statute that automatically "revoked" beneficiary designation of former spouse upon divorce); *In re MacAnally*, ___ P.2d ___, 2000 WL 328723, at *1, *6 (Colo. Ct. App. Mar. 30, 2000) (ERISA preempts Colorado statute that "revokes any beneficiary designation of a spouse from whom a decedent was divorced at the time of death").

tary of Labor's analysis of the circuit conflict, by the reasoning of the courts below, by the Ninth Circuit's decision in *Emard*, and even by Respondents themselves.

Equally unavailing is Respondents' suggestion (Opp. 8.) that review should be denied because "almost all" of the conflicting authorities pre-date *New York State Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645 (1995). As demonstrated in the petition, numerous post-*Travelers* decisions reaffirm the common-sense notion that ERISA preempts the use of state laws to override ERISA plan beneficiary designations. *See* Pet. 14-15 (citing *Pettit*, 164 F.3d at 861-65; *Mattei v. Mattei*, 126 F.3d 794, 809 (6th Cir. 1997), 126 F.3d at 809; *Marsh*, 119 F.3d at 420; *Metropolitan Life Ins. Co. v. Pressley*, 82 F.3d 126, 130 (6th Cir. 1996)); *accord In re MacAnally*, 2000 WL 328723, at *6. Indeed, both *Emard* and the decision below have been expressly rejected in recent cases, further confirming the need for this Court's immediate review. *Pettit*, 164 F.3d at 861-65; *MacAnally*, 2000 WL 328723, at *5. Thus, contrary to Respondents' dismissive characterization (Opp. 9), Circuit Judge Cynthia Holcomb Hall was in fact reflecting the majority view when she explained that *Travelers* is entirely consistent with a finding of ERISA preemption in this context. *Emard*, 153 F.3d at 962 (Hall, J., concurring in part and dissenting in part).[6]

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[6] Respondents' reliance on *Willmar Electric Service, Inc. v. Cooke*, 2000 U.S. App. LEXIS 10695 (10th Cir. May 16, 2000), is misplaced. That case sheds no light on the questions presented here, because it did not involve an effort to use state law to override ERISA plan beneficiary designations. Instead, *Willmar* involved state regulation of apprenticeship training standards, a subject that, unlike the designation of ERISA plan beneficiaries, "is outside the area of ERISA's concerns." *Id.* at *11.

Respondents also err in claiming that review should be denied because the Washington Supreme Court relied on the "fiction" that Petitioner predeceased her former husband. Opp. 9-10. That "fiction" is simply irrelevant, because it does not change the fact that the judgment below applies Washington law to override ERISA beneficiary designations made in accordance with the terms of ERISA plans. Respondents apparently believe that the rights of ERISA beneficiaries can be nullified at will by the simple ruse of promulgating a state law that assumes away the existence of any disfavored beneficiaries, but that assertion is transparently fallacious. And even assuming *arguendo* that this "fiction" gives Respondents an argument against preemption that is absent in some of the cases cited in the petition, that would hardly militate against a grant of certiorari here. To the contrary, it would merely confirm that this case is an ideal vehicle for review, because it presents all aspects of the preemption issue for resolution in a single case.[7]

III. The Decision Below Conflicts With This Court's Precedents

Respondents contend that § 11.07.010 passes muster under ERISA's anti-alienation provision and *Boggs v. Boggs*, 520 U.S. 833 (1997), because the transfer of benefits from Petitioner to Respondents occurred by operation of state law rather than through the voluntary act of an ERISA participant or beneficiary. Opp. 10-11.

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[7] Similarly, as the petition observes without contradiction from Respondents (Pet 16-18 & n.4), this case is a particularly suitable candidate for review because it involves both a welfare benefit plan and a pension plan, thereby permitting this Court to resolve the existing conflict over the scope of ERISA's anti-alienation provision in addition to the more general preemption issue included within the first question presented.

Respondents' construction of the anti-alienation provision would yield odd results, to say the least, because it would prohibit only the voluntary transfer of ERISA plan benefits while permitting all involuntary transfers. In any event, Respondents' argument is incorrect. As *Boggs* itself makes clear, an attempt to use state law to work an involuntary divestiture of ERISA beneficiaries' rights in pension benefits is prohibited by the anti-alienation provision. 520 U.S. at 847, 851-53.

Contrary to Respondents' suggestion (Opp. 11), moreover, Petitioner's entitlement to the pension benefits at issue here is unaffected by the terms of the divorce decree. That decree merely provided that David Egelhoff was entitled to the pension plan proceeds during his lifetime, without mentioning, let alone eliminating, Petitioner's rights as the designated beneficiary of that plan. Pet. App. 3a. And in any event, it is uncontested that the divorce decree is not a "qualified domestic relations order[]" under 29 U.S.C. § 1056(d)(3) (*see* Pet. 16 n.3), so the decree could not have deprived Petitioner of her beneficiary status even if it had purported to do so. *Boggs*, 520 U.S. at 846-47, 851.

Finally, Respondents fail in their attempt to reconcile the decision below with this Court's holding in *Travelers* that ERISA preempts state laws "mandat[ing] employee benefit structures or their administration." 514 U.S. at 658. Respondents assert that § 11.07.010 does not impose meaningful burdens on ERISA plan administrators, but the amicus curiae briefs filed in support of certiorari—by organizations representing literally thousands of ERISA plan sponsors and administrators—persuasively refute Respondents' sanguine assessment. *See* Amicus Br. of The Boeing Co. and the National Ass'n of Mfrs. at 3-8, 10-14; Amicus Br. of American Council of Life Insurers at 7-9. As those briefs demonstrate, the decision below creates an administrative nightmare for ERISA plans by requiring plan administrators to research and interpret countless state laws af-

fecting beneficiary designations, imposing a substantial risk of double liability, and effectively requiring plan administrators to burden the federal courts with huge numbers of interpleader actions. *Id.*; *see also* Pet. App. 50a (Secretary of Labor's brief notes that the preemption analysis upheld below "would subject plans to a multiplicity of regulation varying with each state and prevent the nationally uniform administration of employee benefit plans that ERISA intended").

CONCLUSION

The lower state and federal courts are sharply divided over the questions presented in the petition. Those questions arise with considerable frequency and are of central importance to the efficient and effective administration of employee benefit plans covering millions of Americans. This Court's review is essential in order to provide ERISA plan sponsors, administrators, participants, and beneficiaries, as well as the lower courts, with clear guidance regarding the determination of beneficiaries entitled to receive billions of dollars of ERISA plan benefits. The petition for a writ of certiorari should be granted.

Respectfully submitted.

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In The

Supreme Court of the United States

DONNA RAE EGELHOFF,

Petitioner,

v.

SAMANTHA EGELHOFF, a Minor, by and through her Natural Parent Kate Breiner, and David Egelhoff,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of Washington

MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE* AND BRIEF OF THE BOEING COMPANY AND THE NATIONAL ASSOCIATION OF MANUFACTURERS AS *AMICI CURIAE* IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE*

Pursuant to Rule 37 of the Court, *amici curiae* The Boeing Company ("Boeing") and the National Association of Manufacturers (the "NAM") move for leave to file the accompanying brief *amici curiae*.

Petitioner has consented to the filing of this brief *amici curiae*. The consent letter of Petitioner's counsel is filed herewith. Although requested by the *amici curiae* to do so, Respondents have not consented to the filing of the brief *amici curiae*.

The accompanying brief of the *amici curiae* brings the viewpoint of sponsors and administrators of employee benefit plans governed by the Employee Retirement Income Security Act, 29 U.S.C. §§ 1001-1461 ("ERISA"), concerning the issues raised by the Petition for a Writ of Certiorari in this case.

Boeing is an aerospace company that has business operations in 45 states and employs approximately 173,000 persons who are covered by various pension plans and employee welfare benefit plans sponsored by Boeing and governed by ERISA. Boeing is the sponsor of the life insurance plan and the pension plan that provided the employee benefits at issue in this case.

The NAM represents approximately 14,000 member companies and 350 member associations serving manufacturers and employees in every industrial sector in all 50 states. Members of the NAM sponsor a wide range of employee benefit plans.

The *amici curiae* believe that the viewpoint of sponsors and administrators of ERISA-governed employee benefit plans will provide the Court with a perspective on the issues raised in the Petition for a Writ of Certiorari which is different in many respects from the perspective of benefit claimants such as Petitioner and Respondents in this case.

Amici curiae respectfully request that the Court grant this motion for leave to file the accompanying brief.

Respectfully submitted,

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BRIEF OF THE BOEING COMPANY AND THE NATIONAL ASSOCIATION OF MANUFACTURERS AS *AMICI CURIAE* IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

Amici curiae The Boeing Company ("Boeing") and the National Association of Manufacturers (the "NAM") respectfully submit this brief in support of Petitioner Donna Rae Egelhoff's Petition for a Writ of Certiorari to review the judgment of the Supreme Court of Washington in this case.[1]

STATEMENT OF INTEREST

Boeing is an aerospace company that employs approximately 173,000 persons in business operations located in 45 states. Boeing sponsors various pension plans and employee welfare benefit plans that are subject to the provisions of the Employee Retirement Income Security Act, 29 U.S.C. §§ 1001-1461 ("ERISA"), and that provide benefits to Boeing's employees. Boeing, through delegation of authority to a committee consisting of Boeing employees, acts as the administrator of these ERISA-governed employee benefit plans. Boeing is the sponsor of the life insurance plan and the pension plan that provided the employee benefits at issue in this case.

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[1] Counsel for a party did not author this brief in whole or in part. No one, other than the *amici curiae*, or their counsel, made a monetary contribution to the preparation or submission of this brief. Boeing has provided Petitioner Donna Rae Egelhoff with financial support in connection with her Petition for a Writ of Certiorari to review the decision below.

Boeing submits this brief to highlight for the Court the enormous practical problems created for plan administration – problems that Congress had foreseen and sought to avoid – from state-by-state adjudication of plan beneficiary status as contemplated by the decision below.

The decision below conflicts with ERISA and threatens the uniformity and predictability of plan administration. Boeing and other ERISA plan administrators and sponsors are placed in an untenable state of uncertainty by the continuing split of judicial authority concerning the extent to which ERISA preemption offers protection to the beneficiary designation schemes incorporated into employee benefit plans. If Boeing administers its plans in accordance with the holding of the decision below, it will place itself at risk of violating fiduciary duties imposed by ERISA and at risk of double payment of benefits to competing benefits claimants.

The NAM is the nation's oldest and largest broad-based industrial trade association. The NAM represents 14,000 members (including 10,000 small and mid-sized companies) and 350 member associations serving manufacturers and employees in every industrial sector and all 50 states.

The NAM's mission is to enhance the competitiveness of manufacturers and improve American living standards by shaping a legislative and regulatory environment conducive to U.S. economic growth and to increase understanding about the importance of manufacturing to America's economic strength. To this end, the NAM participates in cases as *amicus curiae* to promote

fairness and efficiency in the litigation process. The interpretation of legal obligations under federal statutes like ERISA is important to all companies that must compete in an increasingly global economy.

Boeing and the NAM also have strong interests in having the Court review whether the decision below erroneously constricts the scope of the uniform national law of employee benefits intended by Congress when it enacted ERISA. They are concerned that an overly restrictive application of ERISA preemption will force employee benefit plans to use more resources on administration and litigation costs, with fewer resources available for benefits.

ARGUMENT

I. DIVISION OF JUDICIAL AUTHORITY AS TO WHETHER STATE LAW MAY OVERRIDE ERISA BENEFICIARY DESIGNATIONS ADVERSELY IMPACTS ERISA PLANS AND PLAN ADMINISTRATORS.

A. THE DECISION BELOW PLACES ERISA PLAN ADMINISTRATORS AT RISK OF LIABILITY FOR BREACH OF ERISA FIDUCIARY DUTIES.

Plan administrators, to the extent they exercise discretionary authority or control over management of ERISA-governed plans, are fiduciaries with respect to such plans. 29 U.S.C. § 1002(21)(A); 29 C.F.R. § 2509.75-8, at D-3 (U.S. Department of Labor regulation stating that a plan administrator by "the very nature of his position" has discretionary authority and is an ERISA fiduciary).

Among the fiduciary duties expressly stated in ERISA is the requirement that fiduciaries discharge their duties with respect to a plan "in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of [ERISA]." 29 U.S.C. § 1104(a)(1)(D) (hereinafter "Section 1104(a)(1)(D)"). Plan administrators who breach their fiduciary duties are personally liable for any loss to the plan and subject to such other equitable or remedial relief as a district court may deem appropriate. 29 U.S.C. § 1109(a). With respect to a breach of fiduciary duty, the Secretary of Labor and plan beneficiaries are authorized to bring civil actions in district court for appropriate relief against breaching fiduciaries. 29 U.S.C. § 1132(a)(3), (e)(1).

In this case, the beneficiary designation system established in the Boeing plans is similar to such systems commonly incorporated into ERISA plans. *See, e.g., Krishna v. Colgate Palmolive Co.*, 7 F.3d 11, 12 (2d Cir. 1993); *McMillan v. Parrott*, 913 F.2d 310, 311 (6th Cir. 1990). That system provides for benefit payments to beneficiaries designated on official beneficiary designation forms filed with the plan administrator. Pet. App. 9a & n.39.[2]

The decision of the Washington Supreme Court below does not take issue with Petitioner's contention that, in the absence of the state statute at issue, Wash. Rev. Code § 11.07.010 (hereinafter "RCW 11.07.010"), she

[2] "Pet." references pages in the Petition for a Writ of Certiorari filed in this case, and "Pet. App." references pages in the Appendix to the Petition.

would be entitled to the plan benefits under documents and instruments that govern the Boeing plans. The Washington Supreme Court decision, however, minimizes the significance of the fact that application of RCW 11.07.010 results in the payment of plan benefits to persons different from those to whom plan benefits would be paid if the plan documents and instruments were followed pursuant to Section 1104(a)(1)(D). Without further analysis, the Washington Supreme Court observed:

> Benefits under the plan remain to be distributed in accord with the plan documents under ERISA. While a state statute such as RCW 11.07.010 may bring the default distribution provisions into effect, it does not alter the nature of the plan itself, the administrator's fiduciary duties, or the requirements for plan administration.

Pet. App. 21a (footnote omitted). Having concluded that payment of benefits to persons other than the designated beneficiary is, nonetheless, "in accord with the plan documents under ERISA," the Washington Supreme Court held that Respondents "are entitled to receive the benefits." *Id.*; Pet. App. 28a. Without acknowledging that it does so, the Washington Supreme Court decision finds that RCW 11.07.010 overrides and invalidates provisions of plan documents.

The Secretary of Labor, the federal officer mandated to interpret and enforce the fiduciary duty provisions of Title I of ERISA, *see* Pet. App. 50a, however, takes a position contrary to that of the Washington Supreme Court. In her *amicus brief* to the court below, the Secretary stated her agreement with the line of cases represented

by *Metropolitan Life Ins. Co. v. Pressley*, 82 F.3d 126, 130 (6th Cir. 1996), which finds that Section 1104(a)(1)(D) establishes "a clear mandate that plan administrators follow plan documents to determine the designated beneficiary." The *Pressley* line of cases requires plan administrators to follow a beneficiary designation scheme set forth in plan documents. Pet. App. 58a. Under *Pressley*, failure to do so would violate the fiduciary obligation stated in Section 1104(a)(1)(D).

The dilemma for ERISA plan administrators is stark. If they comply with state laws such as RCW 11.07.010 to override the plan's beneficiary designation procedures, administrators will subject themselves to risk of liability for breach of Section 1104(a)(1)(D) fiduciary duties in civil actions that may be brought by the Secretary of Labor or by persons claiming benefits under the plan's beneficiary designation. Given the array of potential venues open to plaintiffs under 29 U.S.C. § 1132(e)(2), there is also a considerable risk that such litigation may be brought in a district court within a judicial circuit that has adopted the rule established in the *Pressley* line of cases.

B. THE CURRENT SPLIT OF JUDICIAL AUTHORITY PLACES EMPLOYEE BENEFIT PLANS AT RISK OF DOUBLE PAYMENT OF BENEFITS AND/OR ADDITIONAL LEGAL COSTS.

ERISA plan administrators are charged with the fiduciary duty to provide benefits to plan beneficiaries pursuant to the provisions of the plan. 29 U.S.C.

§ 1104(a)(1)(A)(i) and (D). Administrators have the duty to interpret plan provisions and to make decisions as to who is entitled to receive benefits. However, in situations similar to those presented by the facts of this case, a decision by an administrator to pay benefits to one competing claimant puts the plan at risk of double payment of benefits.

As pointed out by Petitioner, Pet. 26, this case provides a clear illustration of this risk. Aetna Life Insurance Company ("Aetna"), the insurer and claims administrator for the Boeing life insurance plan in this case, paid $46,000 in life insurance benefits to Petitioner Donna Rae Egelhoff in August 1994. Pet. App. 4a. This payment was made pursuant to David Egelhoff's beneficiary designation form and in compliance with Aetna's ERISA obligation to act in accordance with the documents and instruments governing the plan. Aetna is now faced with pending litigation in which Respondents in this case are seeking to recover the life insurance plan benefits that Aetna paid to Petitioner more than five and a half years ago. *See* Pet. 26 & n.8. If Respondents are successful in obtaining a second payment of these benefits, there is no certainty that Aetna will be able to recover the first payment.

The additional costs from such double payments and from related litigation will inevitably be reflected in increased costs for benefit plans and an inevitable reduction in economic resources available for benefit payments.

Although employee benefit plans can avoid double payment risks by filing interpleader actions and naming

the competing claimants as interpleader defendants, *see* 28 U.S.C. § 2201, interpleader actions themselves impose economic costs and risks. As Judge Hall observed in the *Emard* decision,

> even this [reduced interpleader] burden might, in the aggregate, discourage the use of interpleader or similar procedural devices, disrupt the uniform administration of ERISA plans, and perhaps lead employers to reduce plan benefits or eliminate some benefits altogether.

Emard v. Hughes Aircraft Co., 153 F.3d 949, 963 (9th Cir. 1998) (Hall, J., concurring in part and dissenting in part), *cert. denied*, 525 U.S. 1122 (1999).

In addition to the costs of bringing interpleader lawsuits, employee benefit plans may face claims for recovery of attorneys' fees by prevailing claimants in interpleader actions. 29 U.S.C. § 1132(g)(1).

Furthermore, if the current split of authority on the issues in this case encourages employee benefit plans to routinely pass the administrative decision-making tasks to the courts through interpleader lawsuits, there will be added social costs in the form of increased burdens on the courts.

II. THE DECISION BELOW FRUSTRATES ERISA'S OBJECTIVE OF ESTABLISHING A UNIFORM NATIONAL LAW OF EMPLOYEE BENEFITS AND ADVERSELY IMPACTS ADMINISTRATION OF ERISA PLANS.

In *Boggs v. Boggs*, 520 U.S. 833, 841 (1997), the Court recognized that ERISA's preemption clause, 29 U.S.C.

§ 1144, will preempt state law that "conflicts with the provisions of ERISA or operates to frustrate its objects." In enacting ERISA and ERISA's broad preemption clause, Congress intended to provide plan sponsors and plan administrators with the advantages of a nationally uniform law of employee benefits and a uniform set of administrative procedures governed by a single set of regulations. *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 12 (1987).

In *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 656-57 (1995), the Court observed:

> We have found that in passing § 514(a), Congress intended
>
> > "to ensure that plans and plan sponsors would be subject to a uniform body of benefits law; the goal was to minimize the administrative and financial burden of complying with conflicting directives among States or between States and the Federal Government . . . , [and to prevent] the potential for conflict in substantive law . . . requiring the tailoring of plans and employer conduct to the peculiarities of the law of each jurisdiction." *Ingersoll-Rand [Co. v. McClendon]*, 498 U.S. [133,] at 142, 111 S.Ct. at 484 [1990].
>
> . . . The basic thrust of the pre-emption clause, then, was to avoid a multiplicity of regulation in order to permit the nationally uniform administration of employee benefit plans.

Under ERISA, a plan sponsor has discretion to incorporate administrative procedures into the plan documents, as long as those procedures are consistent with ERISA's provisions. Section 1104(a)(1)(D). Where plan documents provide for payment of benefits to the beneficiary designated on a form on file with the plan, plan administrators merely have to review the plan's files to determine the proper beneficiary. The courts have recognized the efficiency of this simple approach. *See, e.g., McMillan*, 913 F.2d at 312 (Pursuant to ERISA, "administrators and courts need look no further than the plan documents to determine the beneficiary, thus avoiding expensive litigation.").

By taking a purported "signal" from the Court for a "significant retreat" from ERISA preemption, Pet. App. 12a, the decision below threatens employee benefit plans with the added burdens of the multiplicity of state regulations that Congress sought to avoid.

A. THE DECISION BELOW FORCES A MULTIPLICITY OF STATE REGULATIONS ON ERISA PLAN ADMINISTRATORS.

If, as the decision below finds, state law may be used to override ERISA beneficiary designations, the administrators of employee benefit plans with participants and beneficiaries in multiple states will be required to develop and maintain a functional knowledge of the applicable law of numerous states. The Boeing plan administrators, by way of example, would need to determine whether state laws in at least 45 different states operate to override plan beneficiary designations. The

administrators would need to be knowledgeable of judicial and administrative interpretations of such state laws. They would need to keep current on changes in these laws and interpretations of these laws.

Given the mobility of the American workforce and population, it is inevitable that even small ERISA plans covering participants employed in a single state would face similar burdens of multiplicity of state regulations. Retirees with vested pension benefits often relocate in different states with their spouses. If such a couple later divorces and the pension plan participant dies without changing a previously filed beneficiary form designating the spouse, the administrator of the plan would be required to become knowledgeable of state law of the state of residence, with which the sponsoring employer, the plan and the administrator may have had no previous connection.

By contrast, a uniform national rule that allows administrators to follow the beneficiary designation procedures adopted in governing plan documents will avoid these burdens. This is the uniformity that Congress intended and incorporated into the provisions of ERISA. Section 1104(a)(1)(D); 29 U.S.C. § 1144(a).

B. THE DECISION BELOW THREATENS TO IMPOSE COMPLEX CONFLICT-OF-LAW ISSUES ON EMPLOYEE BENEFIT PLANS.

By finding that state law may be used to override ERISA beneficiary designations, the decision below threatens to impose complicated conflict-of-law issues on ERISA plan administrators. In many instances, the facts

and circumstances presented to plan administrators would provide little guidance as to which state laws concerning beneficiary designations should be applied.

Although a seemingly endless array of hypothetical situations could be developed, the actual facts in the case of *Hill v. AT&T Corp.*, 125 F.3d 646 (8th Cir. 1997), illustrate the potential complications that ERISA plan administrators would face if ERISA's uniformity principle is abandoned. The facts in *Hill* include the following:

(1) John and Judy Hill were married in the State of Missouri in 1970;

(2) while married and a resident of Missouri, Judy was employed by AT&T;

(3) thereafter the couple moved to the State of Washington where Judy continued her employment with AT&T;

(4) in 1979, Judy designated John as her primary beneficiary under the AT&T savings plan on the plan's beneficiary designation form;

(5) in July 1986, the couple separated and John returned to Missouri;

(6) Judy filed for divorce and a Washington court granted a default divorce decree in November 1986;

(7) Judy never modified her designation of John as her beneficiary under the plan;

(8) following the divorce, Judy moved to the State of Rhode Island, where she died in 1991 while still employed by AT&T;

(9) John and the contingent beneficiary listed on the plan's beneficiary designation form both claimed entitlement to Judy's plan benefits;

(10) despite receiving notice of these competing claims, the plan paid benefits to the contingent beneficiary;

(11) John then filed a lawsuit in Missouri, claiming the benefits under the provisions of Washington law, as it existed prior to the adoption of RCW 11.07.010.

Id. at 647-48.

These and similar sets of facts present little administrative difficulty for plan administrators if they are able to follow ERISA's directive to use the beneficiary designation procedures of the plan documents. Section 1104(a)(1)(D). By contrast, if state law is permitted to override ERISA beneficiary designation procedures, plan administrators would repeatedly face difficult conflict-of-law issues. Which state law would govern? What facts would administrators have to develop to make this determination? How are those facts to be weighed? Which state's rules of conflicts will govern? These conflict-of-law burdens would be in addition to whatever further burdens may be imposed by application of substantive state law – once the applicable state law has been determined.

To allow state law to override ERISA's beneficiary designation procedures will significantly erode Congress's intended national uniformity of employee benefits

law, and will impose significant administrative burdens on plan administrators.

CONCLUSION

For the foregoing reasons, Boeing and the NAM respectfully request the Petition for a Writ of Certiorari be granted.

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No. 99-1529

IN THE

Supreme Court of the United States

DONNA RAE EGELHOFF,

Petitioner,

v.

SAMANTHA EGELHOFF, A MINOR, BY AND THROUGH HER NATURAL PARENT KATE BREINER and DAVID EGELHOFF,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF WASHINGTON

MOTION OF THE AMERICAN COUNCIL OF LIFE INSURERS FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* AND BRIEF *AMICUS CURIAE* IN SUPPORT OF CERTIORARI

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Pursuant to this Court's Rule 37.2(b), the American Council of Life Insurers ("ACLI") respectfully moves for leave to file the attached brief *amicus curiae* in this case. The consent of the attorney for petitioner, William Kilberg, Esq., has been obtained. The consent of the attorney for respondents, Michael W. Jordan, Esq., was requested but refused.

Amicus ACLI is based in Washington, D.C., and is an association representing 435 legal reserve life insurance companies, accounting for over 73% of life insurance and over 82% of pension business with such companies in the United States.

The insurance industry represented by *Amicus* ACLI is extremely concerned with the implications of this case for the future of employer-sponsored life insurance coverage. The Washington State Supreme Court held in the decision below that a state probate statute, Wash. Rev. Code § 11.07.010, is not preempted by the Employee Retirement Income Security Act, 29 U.S.C. § 1144(a) (1999) (ERISA), even with respect to the pension plan. Thus, the Court allowed a state statute to override and nullify the deceased's beneficiary designations under both his life insurance plan and a pension plan. *Egelhoff v. Egelhoff*, 139 Wash. 2d 557, 989 P.2d 80 (1999).

ACLI has a unique perspective on the impact that this decision will have on its members' ability to offer and administer life insurance and death benefits through employer-sponsored plans. In filing this brief, ACLI seeks to bring to the Court's attention matters that have not been fully addressed by the parties regarding the negative effects of the decision below on the provision of life insurance benefits.

Respectfully submitted,

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STATEMENT OF INTEREST

The American Council of Life Insurance ("ACLI"), based in Washington, D.C., is an association representing 435 legal reserve life insurance companies, accounting for over 73% of life insurance and over 82% of pension business with such companies in the United States.[1]

The insurance industry represented by *Amicus* ACLI is extremely concerned with the implications of the holding below for the future of employer-sponsored life insurance coverage. Relying on an inappropriately narrow reading of the preemption clause in the Employee Retirement Income Security Act, 29 U.S.C. § 1144(a) (1999) ("ERISA"), the Washington State Supreme Court has held that a state probate statute, Wash. Rev. Code § 11.07.010 (the "Statute"), can nullify the disposition of plan benefits made in accordance with the terms of ERISA. As a result, in this case the decedent's express designation of petitioner, his former wife, as beneficiary under both his life insurance and pension plans was nullified by the Statute's mandatory presumption that his former wife as a matter of law "died at the time of entry of the decree of dissolution."[2]

The ruling of the Washington Supreme Court has jeopardized the future of employer-sponsored life insurance benefit plans covering millions of Americans. According to the Federal Bureau of Labor Statistics, 74% of all Americans employed on a full-time basis are covered by employer-sponsored life insurance.[3] The percentage is even higher for

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1. Counsel for *Amicus* were the sole authors of this brief. No person or entity other than *Amicus* made a financial contribution to this brief.

2. *Egelhoff v. Egelhoff*, 139 Wash. 2d 557, 575, 989 P.2d 80, 90 (1999).

3. Ann C. Foster, *Brief: Life Insurance*, Compensation and Working Conditions, Winter 1997, at 53.

public sector employees — 87%.[4] Life insurance is considered so valuable a benefit in attracting and retaining qualified workers that fully 85% of both private and public employers pay for the full cost of such insurance.[5]

If the opinion of the Washington Court is allowed to stand, life insurance inevitably will become more expensive, more difficult to administer, and less accessible for Americans. Statutes like Washington's will succeed in eroding or eliminating the bases for the utility of life insurance as a financial management and estate planning tool: its certainty and its liquidity in the wake of the insured's death. Life insurance proceeds are designed to be readily accessible to beneficiaries. Once the insurer receives proof of an insured's death, payment of the death benefit to the designated beneficiary is normally an expeditious procedure.

The named beneficiaries of the millions of life insurance policies in effect in this country are entitled to rely on an expectation that they will receive the proceeds of these policies when making critical future financial decisions for themselves, their families, and their businesses. Life insurance serves numerous socially beneficial functions; the proceeds from a policy can provide funds to keep a business functioning after the death of its principal, to pay for a child's education, to pay off a mortgage, to provide for additional retirement income, and to encourage gifts to charity.

The Statute will defeat the legitimate expectations of named plan beneficiaries, as well as those of plan participants, who will no longer have an absolute right to decide for themselves who their beneficiaries should be. So too, the plan sponsors,

4. *Id.* at 54 (citing *Employee Benefits in State and Local Governments*, Bulletin 2477, Bureau of Labor Statistics (1994)). *See also* Buist M. Anderson, *Anderson on Life Insurance* § 1.6 at 22 (1991) ("Every large employer, including the federal government, provides group life insurance for its employees.").

5. Foster, *supra* note 3, at 55.

fiduciaries, and administrators of ERISA plans need to be able to decide what types of benefits to offer to plan participants, and to ascertain their rights and liabilities in regard to those benefits with certainty. Yet the ruling at issue imposes an impossible burden on them, allowing each state to dictate how the beneficiary of a life insurance policy will be determined, and frustrating ERISA's goal of achieving uniformity and consistency in benefits administration by preventing them from offering *uniform* life insurance and death benefits.

Such a result runs counter to strong federal policy in this area aimed at encouraging employers to establish the retirement and welfare plans that most Americans and their families depend upon for their post-retirement income, health care benefits, and life insurance benefits.[6] As for insurers, the rationale of the decision makes it infeasible for them to issue life insurance coverage to a multi-state employer group that is both *predictable* with respect to the observance of beneficiary designations, and *affordable, i.e.*, that constrains premium rates and plan costs both by achieving economies through uniform administration of policy benefits, and by avoiding expensive and time-consuming challenges resulting from inconsistent state directives and conflicting beneficiary claims.

SUMMARY OF ARGUMENT IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

This case concerns a dispute regarding employer-provided benefits between a decedent's children from a prior marriage and a subsequent spouse, similar to the circumstance presented in this Court's prior decision in *Boggs v. Boggs*, 520 U.S. 833 (1997). In *Boggs*, this Court held that ERISA preempted a state

6. Congress insisted on the certainty of rights and obligations under ERISA, noting in Title I that "employees with long years of employment are losing anticipated retirement benefits owing to the lack of vesting provisions in such plans," and that "employees and their beneficiaries have been deprived of anticipated benefits." ERISA § 2(a), 29 U.S.C. § 1001(a).

statute that would allow a non-participant spouse to transfer an interest in her husband's pension funds to her sons. Although the Court acknowledged that descent, distribution, and marital issues are quintessential examples of traditional areas of state concern,[7] it found that ERISA's strong anti-alienation provisions preempted the state statute.[8]

Here in *Egelhoff*, a deceased participant's children have asserted state law-based claims to the proceeds of ERISA pension and welfare benefit plans (the latter encompassing life insurance benefits), although they are neither participants nor beneficiaries in these plans.[9] The Washington Supreme Court has now ruled, contrary to the holding of *Boggs*, that the Statute at issue here, Wash. Rev. Code § 11.07.010(2)(a), which automatically revokes the designated beneficiary status of a spouse upon divorce, does not run afoul of ERISA.[10] Whether there is found here to be a "direct clash" with ERISA's objectives, in the words of the *Boggs* Court,[11] or whether ERISA's preemption clause is applied,[12] the result should be the same: this Court should grant certiorari and conclude that the Washington "state law cannot stand."[13]

Most likely, the Washington legislature enacted Wash. Rev. Code § 11.07.010 to solve what it perceived to be an endemic social problem — insureds "forgetting" to change their

7. *Boggs*, 520 U.S. at 839-40.

8. ERISA § 206(d), 29 U.S.C. § 1056(d), *cited in Boggs*, 520 U.S. at 851.

9. In order to have standing to file a suit for benefits under ERISA, an individual must either be a participant or beneficiary of the plan. ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B).

10. *Egelhoff*, 989 P.2d at 92 (citing ERISA § 206(d)(1), 29 U.S.C. § 1056(d)(1)).

11. *Boggs*, 520 U.S. at 844.

12. ERISA § 514(a), 29 U.S.C. § 1144(a).

13. *Boggs*, 520 U.S. at 844.

beneficiaries after a divorce. This paternalistic measure, ostensibly taken "to save policyholders from themselves (and presumably greedy former spouses),"[14] directly interferes with the federal statutory scheme created by Congress in ERISA that seeks to insure that both pension and welfare plans are administered consistently and in accordance with the "documents and instruments governing the plan."[15]

Congress enacted ERISA in 1974 to: (1) protect plan participants and beneficiaries,[16] (2) assure uniformity and efficiency in plan administration,[17] and (3) create incentives for the creation and maintenance of employee benefit plans.[18] *Every one of those Congressional goals would be frustrated by allowing state law, at the option of each state, to trump the beneficiary designation of an ERISA plan.*

14. Jeffrey W. Stempel, *Law of Insurance* § 18.02[c], at 18-12 (1994).

15. ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D).

16. *Boggs*, 520 U.S. at 845 ("The principal object of the statute is to protect plan participants and beneficiaries.") (citing *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 90 (1983)). The statute itself notes that the express purpose is "to protect interstate commerce and the interests of participants in employee benefit plans and their beneficiaries." 29 U.S.C. § 1001(b).

17. *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 656 (1995).

18. *Fort Halifax Packing v. Coyne*, 482 U.S. 1, 11 (1987) ("A patchwork scheme of regulation would introduce considerable inefficiencies in the benefit program operation, which might lead those employers with existing plans to reduce benefits, and those without such plans to refrain from adopting them."). The U.S. Tax Code, in addition, provides incentives both for employers to establish qualified benefit plans as well as for employees to participate in them, since a contribution to a qualified plan is immediately deductible by the employer and only becomes taxable to the employee on subsequent distribution. I.R.C. § 404.

The *Egelhoff* decision, rather than protecting plan participants and their beneficiaries, instead undermines the very reasons they value life insurance — its certainty and its liquidity. The Statute defeats the legitimate expectations of both participants and designated beneficiaries on the basis of an unsubstantiated assumption that insureds inevitably will act incompetently with respect to a highly personal decision. From an insured participant's perspective, the payment of insurance proceeds to someone other than the person intended to be the recipient is the substantive equivalent of a failure to provide the promised benefit.

The decision also creates substantial administrative uncertainties under ERISA for plan sponsors, plan fiduciaries, and life insurance companies. If it is upheld, neither plan sponsors nor fiduciaries could provide an insured death benefit which allows the covered plan participant to select the ultimate beneficiary.

The threat of regulation by inconsistent state laws would drive employers to self-fund life insurance and death benefits, *i.e.*, fund those benefits from their own assets or through a trust.[19] That alternative is economically infeasible for all but the very largest of employers, and likely would be an imprudent use of sponsor and plan assets. Instead of incentives to create benefit plans, the decision below will discourage employers from offering and life insurers from providing reasonably-priced life insurance, by increasing costs related to the determination of the proper beneficiary, and requiring plan administrators and insurers to inquire into their employees' personal matters. It

19. As this Court summarized it in *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 732 (1985), employee welfare plans "may self-insure or they may purchase insurance for their participants. Plans that purchase insurance — so-called 'insured plans' — are directly affected by state laws that regulate the insurance industry," pursuant to ERISA's "insurance saving clause," § 514(b)(2)(A), 29 U.S.C. § 1144(b)(2)(A), which exempts from preemption "any law of any State which regulates insurance, banking, or securities."

would also inspire corrosive intra-family litigation and costly interpleader actions, and would likely force life insurers to make duplicate payments to settle claims.

ARGUMENT

A. The Washington Statute Violates Congress' Intent to Subject Plan Administrators to a Uniform Body of Benefits Law

In *New York State Conference of Blue Cross and Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 646 (1995), this Court specifically noted that one of ERISA's objectives was to promote the "nationally uniform administration of employee benefit plans." The Court recognized that in enacting ERISA, Congress intended:

> to ensure that plans and plan sponsors would be subject to a uniform body of benefits law; the goal was to minimize the administrative and financial burden of complying with conflicting directives among States or between States and the Federal Government . . . , [and to prevent] the potential for conflict in substantive law . . . *requiring the tailoring of plans and employer conduct to the peculiarities of the law of each jurisdiction.*[20] (emphasis added).

Allowing multiple state statutes to affect the interpretation and administration of employee benefit plans (including the disposition of pension plan assets, which may include insurance policies) will have a dramatic effect on plan sponsors and administrators. They will be forced to administer these plans differently in different states, contrary to Congressional intent that plans not be subject to piecemeal regulation. Moreover, administering the plans in accordance with varying state laws will subject plan fiduciaries to potentially devastating claims for breach of fiduciary duty because Congress has made the

20. *Travelers*, 514 U.S. at 656-57 (quoting *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 142 (1995)).

prior determination in ERISA that a plan fiduciary must "discharge his duties with respect to a plan . . . in accordance with the documents and instruments governing the plan,"[21] not in accordance with those state laws.

The State Supreme Court clearly erred in holding that the Statute is not preempted under ERISA because it "does not alter the nature of the plan itself, the administrator's fiduciary duties, or the requirements for plan administration."[22] The Statute unquestionably impacts upon all three elements: (1) it alters the plan of benefits substantially by mandating that written directives as to designation of a beneficiary be superseded if inconsistent with state law; (2) it substitutes state probate law principles, and obligates plan administrators to follow those principles, by requiring plans to pay benefits in a manner that is in direct conflict with both the plan requirements and the written instructions of the decedent, thus violating the fiduciary duty to follow the terms of the plan documents; and (3) it interferes with plan administration and alters the administrators' duties by requiring them to keep track of changes in plan participants' marital status, and to ascertain the effect of Washington's probate law on each participant's circumstances.

The Washington Supreme Court attempts to minimize the negative impact of its decision on uniform plan administration by insisting that while the Statute "may operate upon the beneficiary designation in an ERISA plan," it does not "direct payment of proceeds," nor disturb the beneficiary designation since benefits "remain to be distributed in accord with the plan documents under ERISA."[23] That conclusion is not accurate, because the Statute has created competing ownership interests that conflict with those prescribed by the ERISA plan documents. This is a complete and plain usurpation by the State

21. 29 U.S.C. § 1104(a)(1)(D).

22. *Egelhoff*, 989 P.2d at 90.

23. *Egelhoff*, 989 P.2d at 90, 91.

of an ERISA plan's benefit structure that empowers the plan participant, and the participant alone, to decide the identity of his or her beneficiary.

Far from an issue that merely "brushes against the periphery of an ERISA plan," as the Washington Supreme Court believes,[24] its holding here stands for the proposition that each of the states can control the rights of ERISA plan participants and specify the recipients of ERISA plan benefits. It may be that in some cases (such as Washington state's), the beneficiary is altered only in specific circumstances, such as when "a marriage is dissolved or invalidated . . ."[25] Other jurisdictions have attempted to enact laws whereby such beneficiary designations are altered by state law only if the beneficiary fails to re-designate his or her ex-spouse.[26] Plan sponsors such as multi-state employers will justifiably consider it a nightmare to have to coordinate, in each state, the distribution of benefits in compliance. The Statute thus must be struck down as directly contrary to the strong federal policy in favor of a "uniform body of benefits law," as it imposes on benefit plans (both health and welfare and pension plans) those very "conflicting directives" that ERISA forbids.

B. State Law Cannot Be Allowed to Defeat the Expectations of ERISA Plan Members and Beneficiaries.

As this Court emphasized in *Boggs*, ERISA was enacted to ensure that plan participants and their beneficiaries would receive their expected benefits. For example, a primary purpose

24. *Egelhoff*, 989 P.2d at 88 (quoting *Emard v. Hughes Aircraft Co.*, 153 F.3d 949, 961 (9th Cir. 1998), *cert. denied*, 525 U.S. 1122 (1999)).

25. Wash. Rev. Code § 11.07.010(2)(a).

26. *See, e.g., Brandon v. Travelers Ins. Co. & Abbott Labs.*, 18 F.3d 1321 (5th Cir. 1994) (holding preempted by ERISA such an attempt by the Texas legislature to require a re-designation of an ex-spouse after a divorce in order to maintain him or her as the designated beneficiary on a life insurance policy).

of ERISA's qualified survivor annuity provisions is to "ensure an income stream" to spouses,[27] while ERISA's anti-alienation provision is intended to provide the same income stream to participants and beneficiaries.[28]

Those provisions in ERISA cannot co-exist with the decision of the Washington Supreme Court holding that the State probate statute at issue here is saved from preemption under ERISA Section 514 because it allegedly does not "affect the administration of ERISA plans but '*merely the ultimate ownership of distributed benefits.*' "[29] That description of the effect of the Statute is inaccurate. The "ultimate ownership" determination alters the manner in which ERISA plans determine to whom distribution must be made. Currently, administrators need only look up and apply the participant's current written beneficiary designation. Under the Statute, where the beneficiary is a spouse, the plan administrator first must determine whether that relationship to the participant has changed, and if so, must ascertain the nature of the changed circumstances and form a legal conclusion as to the effect of the State's probate law on the plan's distributive obligation. That process, the Washington Supreme Court's opinion notwithstanding, has a direct and material impact on plan administration.

From the beneficiary's point of view, "ultimate ownership" is not an afterthought, but rather precisely the substantive purpose of his or her designation as a beneficiary. Whether those benefits have been distributed, or are awaiting future distribution, is immaterial. The Statute *presently* determines the criteria pursuant to which the distribution *must* take place, substituting its provisions for the plan's criteria defining the participant's benefit entitlement.

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27. *Boggs*, 520 U.S. at 843.

28. *Id.* at 852. *See also Guidry v. Sheet Metal Workers Nat'l Pension Fund*, 493 U.S. 365, 376 (1990).

29. 989 P.2d at 90 (quoting *Emard*, 153 F.3d at 959).

As this Court held in *Boggs*, ERISA's anti-alienation rules protect plan benefits regardless of whether they "have been distributed" or they are as yet "undistributed."[30] Any other rule would conflict with strong Congressional policy embodied in ERISA to preserve benefits for pension plan participants and beneficiaries. The Statute here, however, operates as an alienation of plan benefits by the State for the purpose of effectuating an involuntary reallocation.

Consider the scenario where a decedent deliberately left an ex-spouse as a named beneficiary in a life insurance policy, perhaps as part and parcel of an informal agreement between the people involved, or to protect children who are still minors, and now finds his or her choice — after death, and hence irrevocably — overruled by state law.[31] Plan sponsors and administrators are entitled to, and under the plan must, assume that the vast majority of participants who fill out a beneficiary designation form have done so deliberately and with the expectation that their choices will be complied with, and should not be made to accept the paternalistic assumption inherent in the Washington State Statute that the participants' choices must be negated.

Moreover, this inappropriate paternalism paradoxically runs afoul of other State policy allowing and even encouraging adult citizens to prescribe advanced directives not only for disposition of their worldly assets (as in a will or trust), but to execute documents such as living wills to declare their intentions as to other very personal decisions — for example, the extent of medical treatment they desire should they be unable to make

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30. *Boggs*, 520 U.S. at 854.

31. *See John Hancock Mut. Life Ins. Co. v. Timbo*, 67 F. Supp. 2d 413, 422 (D.N.J. 1999) (finding that former wife did not waive interest in proceeds of insurance policy bolstered by fact that "throughout the post-divorce period decedent continued to assure her that she would 'be taken care of' at his death.").

such a determination in the future.[32] Instead, the State here has made that decision for presumably competent adults merely by the fact of a divorce, no matter that they have left written instructions with their plan administrators that the death benefit be paid to a former spouse.

The application of statutes such as that sustained by the Washington Supreme Court also defeat beneficiary expectations by inevitably creating delay and increased costs, in part negating the protective purpose of life insurance. Delay occurs as insurance companies and plan administrators are required to parse state laws in each case to determine whether, when, and how a beneficiary designation is to be overridden. Plan sponsors and insurers may be forced to join the competing beneficiaries as defendants in interpleader actions to prevent double or multiple liability. This administrative nightmare inevitably will cause delay and sharply increased costs.[33]

Such litigation not only delays payment of the life insurance benefit,[34] but may even "eat up" all of the insurance proceeds, leaving the winner with a Pyrrhic victory and possibly creating even more discord among competing family members. A noted authority on life insurance points out that the "increase in the

32. *See, e.g.*, Wash. Rev. Code § 70.122.030 ("Directive to withhold or withdraw life-sustaining treatment"); *see also* Cal. Health & Safety Code § 7185.5(d); Fla. Stat. Ann. § 765.102(1); N.Y. Pub. Health Law § 2964(2)(a).

33. *See, e.g.*, *Metropolitan Life Ins. Co. v. Pettit*, 164 F.3d 857 (4th Cir. 1998), where a life insurer was forced to file an interpleader action to allow a court to determine whether the insured's widow or his former wife was entitled to insurance proceeds. 164 F.3d at 859. The court held that the former wife's claim, which sought to impose a constructive trust on life insurance proceeds due under the ERISA plan, was preempted as directly affecting the distribution of plan benefits. 164 F.3d at 865.

34. For example, a final judgment in *Krishna v. Colgate Palmolive Co.*, 7 F.3d 11 (2d Cir. 1993), was nearly four years in coming after the insured's death. *Id.* at 13.

amounts of life insurance, both individual and group, makes it worthwhile to litigate," with such litigation unfortunately serving "to deplete the policy proceeds."[35] Dissipation of policy proceeds is likely where, as here in *Egelhoff*, the life insurance benefits claimed by both litigants amount to only $46,000 (*Appendix to Petitioner's Petition for a Writ of Certiorari*, p. 4a), while the pension benefits total only $35,000 (*Id.* at 6a).

Nor does the Washington law serve the admittedly laudatory purpose of protecting participant choice. Choosing one's beneficiary is normally a simple administrative task: all that is required is to fill out a beneficiary designation card, which is then returned to the plan administrator. Both pension and welfare plan documents uniformly provide that the participant (unless incapacitated) is responsible to notify the plan administrator, in writing, of his or her choice of beneficiary or any change in his beneficiary designation. The Statute at issue here, however, assumes that a plan member is incapable of performing that task, or has neglected to do so, when there has been no challenge to capacity. In situations where a plan member has deliberately chosen not to change his or her beneficiary designation, despite a divorce, the State law steps in and automatically "revokes" a designation that is totally in accord with the participant's wishes.

In sum, the decision of the Washington court clearly runs afoul of Congress's intent in ERISA by allowing state legislation to amend plan benefit structures and to thus defeat the legitimate expectations of plan members. This Statute and similar laws will diminish the value of life insurance and pension benefits by delaying their distribution and generating costly litigation over beneficiary designation and entitlement to benefits.

35. Anderson, *supra* note 4, § 18.10, at 544.

C. The Decision Below Discourages Employers from Sponsoring, and Life Insurers From Providing, Reasonably-Priced Life Insurance Benefits

Rather than foster the Congressional goal, as expressed in ERISA, of permitting "the nationally uniform administration of employee benefit plans"[36] and creating incentives for plan sponsors to establish and maintain employee benefit plans, the Statute imposes on them and upon their insurers an entirely new set of duties and risks. Sponsors and insurers now must determine the validity of beneficiary designations under each jurisdiction in which a plan is offered or maintained, exposing themselves to the threat of lawsuits challenging whatever decision they make.

First, the costs that will be incurred in the determination of the "proper" beneficiary, especially in the inevitable cases of multiple competing claimants, will necessarily be charged to the plan and in turn will make the benefits or insurance policy more expensive for claimants as well as plan administrators.

Second, the prospect of paying more than once for the same claim (as is possible here) will give pause to both insurers and employers who are deciding whether to continue to sponsor and fund these types of benefit plans. This "dual payment" scenario may become more frequent as administrators find that that they have paid life insurance benefits to a beneficiary designated by a decedent in his or her welfare plan, only to be faced with a state court order (whether as a result of a statute like Wash. Rev. Code § 11.07.010, a state law divorce decree, or a state law of constructive trusts) that a different beneficiary be paid.

No matter how carefully an ERISA plan is constructed, or how frequently the plan sponsor or administrator requests that employees update their beneficiary designations, state laws such as the Statute at issue here will generate significant

36. *Travelers*, 514 U.S. at 656.

administrative difficulties. What if, for example, a participant is employed by company "A" in Minnesota and is married with children. Company A provides an ERISA benefit plan which includes life insurance in an amount equal to one year's salary. The participant names his wife as the beneficiary. A year later, the participant is offered a significant promotion involving a transfer to the State of Washington. His spouse prefers Minnesota to the marriage and Washington and they reach an amicable agreement to divorce. The divorce becomes final while he is in Washington. A year later the participant remarries, but does not change the beneficiary designation. His new wife has a child by a prior marriage whom the participant does not adopt. Two years later, the participant and his new wife are killed in an accident, and her child claims that under the Statute and Washington's probate laws, he is the proper ultimate recipient of the husband's life insurance proceeds. The complexity of the litigation that is likely to ensue is patent, as is the burden such litigation could impose upon Company A's ERISA plan, its insurance carrier, and the participant's designated beneficiary. The Washington State Court's decision that the Statute is not preempted by ERISA becomes the sole spark for such extensive litigation requiring the involvement of the ERISA plan or its insurance carrier.

This hypothetical scenario illustrates the clear disincentive that sponsors or administrators of multi-state plans will now have to create and support such plans. The increased costs and more complex administration are deterrents, rendering the cost of providing life insurance benefits prohibitive. Insurers themselves will be forced to raise premiums to compensate for the inevitable increase in interpleader actions and rise in incidence of conflicting judgments demanding payments to warring beneficiaries.

D. State "Domestic Relations Laws" Cannot Be Allowed to Override ERISA

As part of its unilateral determination that this Court's *Travelers* opinion has substantially altered ERISA preemption, the Egelhoff decision contends that the Statute at issue is not preempted because it involves "domestic relations and family law, [which] is an area of law historically left to state control."[37] This simplistic and wholly unsound rationale simply glosses over this Court's decision in *Boggs*,[38] subsequent to *Travelers*, which flatly rejected a doctrine that state probate and domestic relations laws automatically trump beneficiary rules prescribed by ERISA-qualified welfare and pension plans.

In addition, that conclusion is predicated on a grossly overbroad definition of the scope of "domestic relations" law reserved to the states, a definition that goes far beyond existing precedent and is contrary to ERISA's specific language. This Court has held that the federal courts are divested of power under Article III of the Constitution in very limited circumstances, namely, "to issue *divorce, alimony, and child custody decrees*."[39] Those categories, and those alone, define the domestic relations law authority reserved to the states. The Statute upheld in *Egelhoff* does not involve any state-law based claims to the proceeds of ERISA pension and welfare benefit plans. The State's assertion that it can dictate the disposition of ERISA plan benefits is not a "domestic relations" issue, but instead an arrogation of authority in a purely federal preserve.

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37. *Egelhoff*, 989 P.2d at 92.

38. *Boggs*, 520 U.S. at 841.

39. *Ankenbrandt v. Richards*, 504 U.S. 689, 703 (1992) ("The domestic relations exception, as articulated by this Court since *Barber* [*v. Barber*, 62 U.S. (21 How.) 582 (1858)], divests the federal courts of power to issue *divorce, alimony, and child custody* decrees.") (emphasis supplied).

Nor has Congress hesitated to amend ERISA as it impacts an area at the heart of what the Washington Court deems "domestic relations and family law." For example, Congress enacted ERISA's anti-alienation provision[40] to ensure that pension benefits are not diverted before they are distributed to the participant or beneficiary for whom they are intended, normally a spouse or children. Alienation under ERISA can be accomplished only in one specific way: by employing a qualified domestic relations order ("QDRO").[41] No suggestion has been made that a QDRO is involved here.

A state cannot be permitted to end-run ERISA's requirement that a plan must abide by "documents and instruments governing the plan"[42] whenever it asserts, in its discretion, that its own "domestic relations" issues are involved. The upshot would be nullification of virtually all ERISA plan criteria governing death benefit and pension beneficiary designations, as well as nullification of ERISA's preemption provisions. Such an untenable position would presumably leave intact only beneficiary designations of non-family members, such as occurs in "key man" insurance policies.

Finally, the "domestic relations" exception to preemption contrived in *Egelhoff* cannot be reconciled with an unbroken line of cases in which this Court has consistently protected beneficiary designations for life and retirement benefits mandated by federal programs against interference from state probate and family law requirements. *See, e.g., Ridgway v. Ridgway*, 454 U.S. 46 (1981), where this Court held that the

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40. *See* 29 U.S.C. § 1056(d)(1), enacted pursuant to the Retirement Equity Act of 1984, Pub. L. No. 98-397, 98 Stat. 1426. *See also Boggs*, 520 U.S. at 851; 29 U.S.C. §§ 1056(d)(3)(A), 1144(b)(7).

41. ERISA requires a plan to pay pension benefits to an alternate payee pursuant to a state domestic relations order if the order meets the specific requirements prescribed in 29 U.S.C. §§ 1056(d)(3)(A), 1144(b)(7).

42. 29 U.S.C. § 1104(a)(1)(D).

beneficiary designation under the Servicemen's Group Life Insurance Act, 38 U.S.C. § 765, *et seq.*, prevailed over a state constructive trust for the benefit of another. *See also Hisquierdo v. Hisquierdo*, 439 U.S. 572 (1979) (benefits payable under the U.S. Railroad Retirement Act may not be divided under the community property laws of California); *Mansell v. Mansell*, 490 U.S. 581 (1989) (Uniformed Services Former Spouses' Protection Act, 10 U.S.C. § 1408, did not grant state courts the power to treat as property divisible upon divorce military retirement pay waived by the retiree in order to receive veterans' disability benefits.)[43]

The *Egelhoff* decision runs contrary to the plainly expressed purpose of Congress to forbid states from interfering with the consistent and uniform provision of benefits provided through plans subject to federal statutory regulation. The "domestic relations" rationale for the decision is a contrivance which collapses when examined in the context of the Statute's actual effects. The sum and substance of those effects is that states, through legislation such as this Statute, can dictate to ERISA plans, their participants and their designated beneficiaries, who actually will receive plan benefits, despite written instructions to the contrary and despite the mandate in ERISA that pension and welfare plans be administered consistently. ERISA preempts any such conduct by the states.

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43. The only exception to this consistent Federal jurisprudence is the aberrational situation noted in *Ridgway* involving so-called "state-slayer" statutes, where state law bars any beneficiary who has committed acts such as murder from inheriting from the decedent. Even in that exceptional (and thankfully rare) situation, however, the federal courts are careful to point out that the goal of uniformity of plan administration can still be achieved:

> Unlike state testamentary transfer laws, state laws prohibiting murderers from receiving death benefits are relatively uniform. Thus, there is little threat of creating a "patchwork scheme of regulation." *Fort Halifax Packing Co. v. Coyne*, 482 U.S. [at 11].

Mendez-Bellido v. Board of Trustees of Div. 1181, A.T.U. N.Y. Employees Pension Fund & Plan, 709 F. Supp. 329, 332 (E.D.N.Y. 1989) (citations omitted).

CONCLUSION

For the above reasons, *Amicus* ACLI respectfully requests that this Court grant the Petitioner's writ of certiorari and reverse the decision of the Washington State Supreme Court.

Respectfully submitted,

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Supreme Court, U.S.
FILED
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No. 99-1529

IN THE
Supreme Court of the United States

DONNA RAE EGELHOFF,

Petitioner,

v.

SAMANTHA EGELHOFF, A MINOR BY AND THROUGH HER NATURAL PARENT KATE BREINER, AND DAVID EGELHOFF,

Respondents.

On Writ of Certiorari to the Supreme Court of Washington

JOINT APPENDIX

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Petition for Writ of Certiorari Filed March 16, 2000
Certiorari Granted June 19, 2000

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Boeing Company Voluntary Investment Plan, Clerk's Papers (No. 94-4-01619-1) at 38, 44-45 (1993 ed.) JA-38

* * *

The following judgments, memoranda and orders have been omitted in printing this joint appendix because they appear on the following pages of the appendix to the printed *Petition for a Writ of Certiorari*:

Opinion of the Supreme Court of Washington (Nov. 18, 1999) 1a

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SUPREME COURT OF WASHINGTON

Case No. 67626-7

In The Matter of The Estate Of: David Egelhoff,

vs:

Samantha Egelhoff, *et al.*,

v.

Donna Rae Egelhoff

RELEVANT DOCKET ENTRIES

DATE	DESCRIPTION OF EVENT OR MOTION
01/27/99	PETITION FOR REVIEW
06/01/99	ORDER ON MOTIONS Petition For Review is Granted
07/01/99	RESPONDENTS SUPPLEMENTAL BRIEF Filed By: Jordan, Michael W. (ATT 16906)
10/14/99	Oral Argument Heard
11/18/99	OPINION
12/07/99	ORDER CHANGING OPINION
12/16/99	MANDATE

WASHINGTON STATE COURT OF APPEALS
Division 02

Case No. 22293-1

In re The Estate of David A. Egelhoff

RELEVANT DOCKET ENTRIES

DATE	DESCRIPTION OF EVENT OR MOTION
08/15/97	Status: Case Pending
10/31/97	MOTION FOR CONSOLIDATION W/22562-0-li
11/13/97	CO RL CONSOLIDATING APPEAL Appeal 225620 Consolidated to 222931
11/25/97	OTHER FILING Notice of Nonparticipation in Appellate Process Administration of Estate is Complete Except For Final Minimal Cash Bequests; Assets in Dispute Before Coa Are Non-Probate Assets Filed By: Smith, Frederick Parker (ATT 02867)
11/25/97	OTHER FILING Notice of Nonparticipation in App Process; Probate Proceedings Are Completed, But PR Will Keep Estate Open For Continuation of Appeal Which Was Filed Under The Cause of The Estate Filed By: Smith, Frederick Parker (ATT 02867)

DATE	DESCRIPTION OF EVENT OR MOTION
02/13/98	APPELLANTS BRIEF Filed By: Jordan, Michael W. (ATT 16906)
03/16/98	RESPONDENTS BRIEF Filed By: Haas, Henry (ATT 04435)
12/23/98	OPINION P-Reversed And Remanded

WASHINGTON STATE COURT OF APPEALS
Division 02

Case No. 22562-0

In Re The Welfare of S.M, Kate Breiner & David Egelhoff

vs.

Donna Rae Egelhoff and John Doe Egelhoff

RELEVANT DOCKET ENTRIES

DATE	DESCRIPTION OF EVENT OR MOTION
10/22/97	Status: Case Pending
11/03/97	MOTION FOR CONSOLIDATION W/22293-1-li
11/13/97	CO RL CONSOLIDATING APPEAL Appeal 225620 Consolidated to 222931

STATE OF WASHINGTON
PIERCE COUNTY SUPERIOR COURT

Case No. 96-2-12626-3

Kate Breiner et al

V.

Donna Rae Egelhoff et Vir. - Civil

RELEVANT DOCKET ENTRIES

Date	Description
11/15/96	Summons & Complaint
08/06/97	Answer & Affirmative Defense
08/27/97	Motion For Summary Judgment
09/30/97	Objection / Opposition
10/10/97	Order Granting Summary Judgment
10/22/97	Notice of Appeal 22293-1/67626-7

STATE OF WASHINGTON
PIERCE COUNTY SUPERIOR COURT

Case No. 94-4-01619-1

Estate of David A. Egelhoff - Probate

RELEVANT DOCKET ENTRIES

Date	Description
11/28/94	Petition For Letters of Administrat
12/05/94	Order in Re Injunction
05/30/97	Motion For Summary Judgment
06/04/97	Motion For Summary Judgment
06/27/97	Motion Hearing
08/08/97	Order Granting Summary Judgment
08/15/97	Notice of Appeal to Court of Appeal
01/07/00	Order to Disburse Funds

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

NO. 96-2-12626-3

SAMANTHA EGELHOFF, a minor
by and through her natural parent KATE BREINER
and DAVID EGELHOFF, a single person,

Plaintiffs,

vs.

DONNA RAE EGELHOFF and
"JOHN DOE" EGELHOFF, wife and husband,

Defendants.

FILED IN COUNTY CLERK'S OFFICE
OCT 01 1997
PIERCE COUNTY, WASHINGTON
TED RUTT, COUNTY CLERK

SECOND CERTIFIED STATEMENT OF
MICHAEL W. JORDAN

Michael W. Jordan hereby certifies under penalty of perjury as follows:

1. Attached hereto is a fax cover page and two page letter from the office of the Insurance Commissioner which I received in my office Tuesday, September 30, 1997.

2. These documents attached hereto are true and correct copies of the originals which were faxed to my office on the date stated.

3. These documents indicate that the office of the Insurance Commissioner is of the opinion that RCW 11.07 regulates life insurance companies.

DATED this 1st day of October, 1997.

JORDAN, IMLER & McGOVERN

/s/ Michael W. Jordan
MICHAEL W. JORDAN, WSB #16906

STATE OF WASHINGTON
[SEAL]
OFFICE OF
INSURANCE COMMISSIONER

FAX NO. (360) 407-0186

PLEASE DELIVER TO:
Michael Jordan

FROM:
John Zander

DATE: 9/30/97

NUMBER OF PAGES INCLUDING
TRANSMITTAL SHEET: 24

COMMENTS: Re: RCW 11.07

IF YOU DO NOT RECEIVE ALL PAGES,
PLEASE CALL (360) 407-0380

STATE OF WASHINGTON
[SEAL]
OFFICE OF
INSURANCE COMMISSIONER

BULLETIN

[DRAFT]

95- July , 1995

Attention: Life Insurers

Subject: Revocation of Life Insurance Beneficiary in Case of Dissolution

It has come to my attention that there are questions with respect to the application of Chapter 11.07 RCW to life insurance benefits or trusts, in the event of a dissolution of marriage or a declaration of the invalidity of a marriage.

The law applies in cases involving decrees of dissolution and declarations of invalidity entered after July 24, 1993. It also applies as of January 1, 1995, to decrees of dissolution and declarations of invalidity entered before July 25, 1993.

Upon dissolution of a marriage, the law revokes a former spouse's interest in a non-probate asset, such as payable-on-death proceeds of a life insurance policy. The non-probate asset passes as if the former spouse died before the decedent. Thus, if a spouse is designated beneficiary, that designation may be revoked by a divorce.

As of January 1, 1995, this law may have some far reaching effects on life insurance proceeds where there have been dissolutions filed through the years. To help alleviate unwanted results, I am requesting companies contact their present policy holders to alert them to this law and its possible effect.

It is also important that any future purchaser of life insurance be apprised of the potential impact this law may have on life insurance proceeds. Companies must educate their agents so that prospective clients will be able to make informed decisions and choices.

Note, however, this automatic revocation does not apply in all situations:

1. It does not apply if the instrument governing disposition of the nonprobate asset expressly provides otherwise - for example, the beneficiary designation states that disposition of the payable-on-death proceeds will not be affected by RCW 11.07 in case of dissolution;

2. It does not apply if the decree of dissolution requires the maintenance of the nonprobate asset for the benefit of children of the marriage or for the benefit of the former spouse; and

3. It does not apply if immediately after the dissolution or invalidation of the marriage, the policy or other instrument could not have been unilaterally revoked by the decedent.

Therefore, the impact of this law may be avoided if (1) the beneficiary designation specifically states that RCW 11.07 does not apply; or if (2) if the matter of payable-on-death proceeds was addressed in the dissolution decree itself with respect to the distribution; or if (3) the instrument could not have been revoked unilaterally by the deceased.

RCW 48.18.440 appears to create a separate property interest in a spouse who is the beneficiary of a life insurance policy. Consumers should be advised to discuss this matter with a legal advisor in the event of dissolution of the marriage.

DEBORAH SENN
Insurance Commissioner

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON COUNTY OF PIERCE

NO. 96-2-12626-3

SAMANTHA EGELHOFF, a minor by and through her natural parent KATE BREINER and DAVID EGELHOFF, a single person,

Plaintiffs,

vs.

DONNA RAE EGELHOFF and "JOHN DOE" EGELHOFF, wife and husband,

Defendants.

FILED IN COUNTY CLERK'S OFFICE
AUG 27 1997
PIERCE COUNTY, WASHINGTON
TED RUTT, COUNTY CLERK

DECLARATION OF HENRY HAAS IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Date: 10/03/97
Time: 9:30 a.m.

The undersigned makes the following Declaration under penalty of perjury as permitted by RCW 9A.72.085:

1. I am one of the attorneys for the Defendant, Donna Rae Egelhoff, and make this declaration in support of the Defendant's Motion for Summary Judgment. This Declaration is made on personal knowledge and sets forth facts which would be admissible in evidence.

2. The identical parties have been involved in companion litigation in Pierce County Cause Number 94-4-01619-1.

3. On June 27, 1997, the Honorable Judge Karen Strombom heard cross motions for summary judgment on stipulated facts in Cause Number 94-4-01619-1, and granted summary judgment in favor of Donna Rae Egelhoff. A copy of the Order granting summary judgment in favor of Donna Rae Egelhoff is attached as Exhibit "A." The facts as stipulated are attached as Exhibit "B."

4. The facts in this case are identical to the Stipulated Facts in Cause Number 94-4-01619-1 with one exception. This case involves a group term life insurance policy on the life of David A. Egelhoff, deceased, which named Donna Rae Egelhoff as the sole beneficiary. Exhibit C. Cause Number 94-4-01619-1 involved a Boeing Company Voluntary Investment Plan ("VIP") which named Donna Rae Egelhoff as the beneficiary. The VIP fund was mentioned in a Decree of Dissolution entered in Pierce County Superior Court Cause Number 93-3-06226-4 on April 22, 1994. The term life insurance was not mentioned in the Decree of Dissolution.

5. The Boeing group term life insurance plan was established under and is regulated by the Employee Retirement Security Act ("ERISA"), 29 U.S.C. §§ 1001-1461. Exhibit D.

DATED this 27th day of August, 1997.

/s/ Henry Haas
HENRY HAAS

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF PIERCE

NO. 96-2-12626-3

SAMANTHA EGELHOFF, a minor by and through her natural parent KATE BREINER and DAVID EGELHOFF, a single person,

Plaintiffs,

vs.

DONNA RAE EGELHOFF and "JOHN DOE" EGELHOFF, husband and wife,

Defendants.

FILED IN COUNTY CLERK'S OFFICE
AUG - 6 1997
PIERCE COUNTY, WASHINGTON
TED RUTT, COUNTY CLERK

ANSWER, AFFIRMATIVE DEFENSES, AND REQUESTS FOR AN AWARD OF ATTORNEYS FEES OF DEFENDANT DONNA RAE EGELHOFF TO PLAINTIFFS' COMPLAINT

COMES NOW DONNA RAE EGELHOFF ("Defendant"), by and through her attorney, HENRY HAAS of McGAVICK GRAVES, P.S., and in answer to Plaintiffs' Complaint for Conversion, states as follows:

I.

In answer to the allegations contained in Paragraph 1 of the Plaintiffs' Complaint, the Defendant admits the same.

II.

In answer to the allegation contained in Paragraph II of the Plaintiffs' Complaint, the Defendant admits the same.

III.

The Defendant answers the allegations contained in Paragraph III of the Plaintiffs' Complaint as follows:

A. Defendant is without sufficient information as to the truth or falsity of Sections 1, 2, and 3 of Paragraph III of Plaintiffs' Complaint and, therefore, denies the same.

B. Defendant admits the allegations contained in Section 4 of Paragraph III of Plaintiffs' Complaint concerning the residence of Defendant. Defendant is without sufficient information as to the truth or falsity of the remaining allegations contained in Section 4 of Paragraph III of Plaintiffs' Complaint regarding the "acts described and complained of" and, therefore, denies the same. Defendant is not married and, therefore, denies the remaining allegations contained in Section 4.

IV.

Defendant answers the allegations contained in Paragraph IV of the Plaintiffs' Complaint as follows:

A. Defendant admits the allegations contained in Sections 1, 2, 3, 4, 5, 6, and 9 of Paragraph IV of Plaintiffs' Complaint.

B. Defendant denies the allegations contained in Sections 7, 8, 10, and 11 of Paragraph IV of Plaintiffs' Complaint.

V.

In answer to the allegations contained in Paragraph V of the Plaintiffs' Complaint, the Defendant denies each and every allegation contained therein.

VI.

In answer to the allegations contained in Section 1 of Paragraph VI of the Plaintiffs' Complaint, the Defendant denies each and every allegation contained therein.

WHEREFORE, HAVING FULLY ANSWERED THE PLAINTIFF'S COMPLAINT, THE DEFENDANT, DONNA RAE EGELHOFF, ASSERTS THE FOLLOWING AFFIRMATIVE DEFENSES:

VII.

FIRST AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the doctrine of collateral estoppel. The parties have previously litigated the issues alleged herein in Pierce County Superior Court Cause No. 94-4-01619-1, wherein the Honorable Karen Strombom granted summary judgment in favor of Donna Rae Egelhoff. The issues decided in that action are identical to the issues presented in this action, and both actions arose from the same transactional nucleus of facts.

VIII.

SECOND AFFIRMATIVE DEFENSE

The life insurance benefits paid to Donna Rae Egelhoff are proceeds from a plan established under, and regulated by, the Employee Retirement Income Security Act (ERISA), 29 U.S.C. §§ 1001-1461 and Plaintiffs' claims are preempted by ERISA. 29 U.S.C. § 1144(a).

IX.

REQUEST FOR AWARD OF ATTORNEYS' FEES

Defendant Donna Rae Egelhoff is entitled to an award of reasonable attorneys' fees and costs pursuant to 29 U.S.C. § 1132(g).

WHEREFORE, having fully answered the Plaintiffs' Complaint and asserted affirmative defense thereto, Defendant Donna Rae Egelhoff prays for the following relief:

1. For an Order dismissing Plaintiffs' Complaint, with prejudice and without an award of costs;

2. For an Order awarding Defendant reasonable attorneys' fees and costs incurred in defending this action; and

3. For such other and further relief as the Court deems just and equitable.

DATED this 6th day of August, 1997.

McGAVICK GRAVES, P.S.

By: /s/ Henry Haas
HENRY HAAS
WSBA #4435
Of Attorneys for Defendant
Donna Rae Egelhoff

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF PIERCE

NO. 94-4-01619-1

IN THE MATTER OF THE ESTATE of DAVID A. EGELHOFF, Deceased.

CERTIFIED STATEMENT OF KATE BREINER

Kate Breiner, under penalty of perjury of the laws of the state of Washington hereby certifies as follows:

1. I am the mother of the heirs of David A. Egelhoff in this matter, Samantha Egelhoff age 16, and David Egelhoff age 20;

2. I had a conversation by telephone with Donna Egelhoff after the date of David A. Egelhoff's death and before his funeral;

3. That phone conversation was initiated by Donna Egelhoff to me;

4. During that conversation, Donna made reference to the fact that she would be getting life insurance proceeds due to David's death, and talked to me about that subject;

5. Donna Egelhoff stated that David had failed to remove Donna's name as beneficiary after their divorce and that because of that fact, this time David Egelhoff's procrastination turned out to be in her favor;

6. During that same conversation, Donna Egelhoff told me that due to David's procrastination and failing to remove

her as beneficiary, she would be getting the life insurance policy money but that my children, Samantha and David, would be getting everything else;

7. After the funeral, I met with Donna Egelhoff at Borders Book Store in Tacoma and during the conversation with her, she referred more than once to the fact that she would be getting benefits due to David's procrastination;

8. During that conversation, she stated that David (decedent) would be angry if he knew this was happening because that was not what he wanted.

DATED this 15 day of July, 1997, at Everett Washington.

/s/ Kate Breiner
KATE BREINER

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF PIERCE

NO. 94-4-01619-1

IN THE MATTER OF THE ESTATE
of
DAVID A. EGELHOFF,
Deceased.

FILED IN COUNTY CLERK'S OFFICE
MAY 30 1997
PIERCE COUNTY, WASHINGTON
TED RUTT, COUNTY CLERK

MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

I. *INTRODUCTION*

COMES NOW, Michael W. Jordan, attorney for Samantha Egelhoff, a minor, and David Egelhoff Jr. This summary judgment motion is brought by the children of decedent, David A. Egelhoff to recover retirement proceeds held by Boeing, David Egelhoff's employer. The children are the sole heirs of the estate of Egelhoff, by operation of law. David Egelhoff's ex-spouse also seeks these same proceeds as set out in the stipulated facts below.

II. *STIPULATED FACTS*

The children of David A. Egelhoff, Samantha Egelhoff, a minor appearing through her natural mother, Kate Breiner and David A. Egelhoff, Jr., appearing through their attorney Michael Jordan of Jordan, Imler, McGovern, P.S., and

Donna Rae Egelhoff, the former wife of David A. Egelhoff, deceased, by her attorney Henry Haas of McGavick Graves, P.S., stipulate to the following undisputed facts as the basis for cross-motions for summary judgment:

Decedent, David A. Egelhoff, married Donna Rae Egelhoff on November 4, 1988, in Tacoma Pierce County, Washington. Husband and wife separated on October 1, 1993, and were divorced on April 22, 1994, in Pierce County Superior Court Cause No. 93-3-06226-4, Findings of Fact, Conclusions of Law and Decree of Dissolution (Exhibit 1). They negotiated a settlement which was documented by a paralegal service and incorporated as Exhibits A and B to both the Findings of Fact and Conclusions of Law and Decree of Dissolution. During the period of their marriage and until his death on July 8, 1994, the decedent was employed by the Boeing Company. Throughout the marriage Donna Egelhoff was employed and contributed to the marital community. The decedent died on July 8, 1994, following a car accident. (See Exhibit 2, Death Certificate) The decedent died intestate.

The decedent had two children by a previous marriage, the "Children" herein. They have been living with their natural mother, Kate Breiner, since the decedent's first divorce. The decedent was paying Court order [sic] child support at the time of his death.

One of the decedent's benefits while employed by Boeing, was a Defined Contribution Profit Sharing Plan known by Boeing as a Voluntary Investment Plan. (hereinafter "VIP") The VIP plan was established under and is regulated by the Employee retirement Income Security Act (ERISA), 29 U.S.C. Sections 1001-1461. A copy of the relevant provisions of the plan are attached as Exhibit 3. The VIP also qualified under Sections 401 and 501 of the IRS Code. The VIP office

at Boeing administered the plan in accordance with all applicable ERISA rules.

Pursuant to ERISA rules, the VIP office required the decedent to complete a Beneficiary Designation Form which was kept on file at the VIP office. The decedent's Beneficiary Designation Form on file at the Boeing VIP office names Donna Rae Egelhoff as the sole and only beneficiary of any proceeds in his VIP account. This Beneficiary Designation Form was filled out and signed by the decedent while he was married to Donna Rae Egelhoff. After the death of David A. Egelhoff the Boeing VIP office contacted Donna Egelhoff and advised her that she was the beneficiary of the VIP fund.

The divorce between the decedent and Donna Rae Egelhoff was commenced by a pro se Petition for Dissolution filed in Pierce County on December 30, 1993. Though Donna Rae Egelhoff was the petitioner, the decedent joined in the petition. The petition at Paragraph 1.7 reads as follows:

> There is community of separate property owned by the parties. The Court should make an equitable division of all of the property.
>
> My recommendation for the division of the property is attached at Exhibit "A".

(See Petition for Dissolution of Marriage, Exhibit 1 copy attached)

Exhibit "A" to the petition mentioned above is a list of the property to be awarded the husband. One line on this list reads as follows:

"One hundred (100) percent of his Boeing retirement 401K and IRA" (See Petition for Dissolution of Marriage, Exhibit "A" to the petition, attached:)

The final dissolution by Findings of Fact and Conclusions of Law were signed and filed on April 22,1994. The Findings were by agreement.

Paragraph 2.9 of the Findings states:

> "The husband has separate property as set forth in Exhibit 'A'. This exhibit is attached or filed and incorporated by reference as part of these findings."

The Exhibit "A" described above is a list of the husband's separate property and includes: "100 percent of his Boeing retirement 401K and IRA". (see Findings of Fact and Conclusions of Law with its Exhibit "A" attached hereto)

After David A. Egelhoff's death on July 8, 1994, both the estate of David A. Egelhoff and Donna Rae Egelhoff made claims to Boeing for the retirement proceeds currently valued at about Thirty-Five Thousand ($35,000) Dollars, subject to payment of federal income tax upon distribution. By stipulation of the parties, these funds are enjoined by court order until further order of this court. . . .

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF PIERCE

NO. 96-2-12626-3

SAMANTHA EGELHOFF, a minor by and through her natural parent KATE BREINER; and DAVID EGELHOFF, a single person,

Plaintiffs,

vs.

DONNA RAE EGELHOFF and "JOHN DOE" EGELHOFF husband and wife,

Defendants.

FILED IN COUNTY CLERK'S OFFICE
NOV 15 1996
PIERCE COUNTY, WASHINGTON
TED RUTT, COUNTY CLERK

COMPLAINT FOR CONVERSION

COMES NOW plaintiffs, Kate Breiner on behalf of her minor child Samantha Egelhoff and David Egelhoff a single person by and through their undersigned attorneys of record and for causes of action against the defendants allege as follows:

I. JURISDICTION

This court has jurisdiction of this lawsuit, because the defendants reside in Pierce County, the defendant does

business in Pierce County, and the cause of action or some part thereof arose in Pierce County, Washington.

II. VENUE

Venue is proper in this court and county pursuant to RCW 4.12.

III. PARTIES

1. Plaintiff, David Egelhoff, is the natural child of David A. Egelhoff deceased and Kate Breiner. He is presently a resident of King County, Washington.

2. Plaintiff, Samantha Egelhoff, is a minor and is the natural child of David A. Egelhoff deceased and Kate Breiner. Samantha Egelhoff lives with her mother, Kate Breiner.

3. Kate Breiner is the natural parent of David and Samantha Egelhoff and resides in King County, Washington.

4. Defendant, Donna RAE Egelhoff, resides in Pierce County, Washington and does business in Pierce County, Washington. The acts described and complained of by plaintiff in this matter occurred either in Pierce County, Washington or King County, Washington. The full and complete name of the spouse of Donna RAE Egelhoff is unknown to these plaintiffs and is therefore referred to as "John Doe" Egelhoff.

IV. FACTS GIVING RISE TO THIS LAWSUIT

1. From approximately November 4, 1988, to April 22, 1994, defendant, Donna Egelhoff, was married to David A. Egelhoff, who was the father of plaintiffs, Samantha and David Egelhoff.

2. On or about April 22, 1994, David A. Egelhoff and defendant, Donna Egelhoff, were divorced by Decree of Dissolution in Pierce County, Washington.

3. On or about July 8, 1994, David A. Egelhoff died in Pierce County, Washington unexpectedly as a result of an accident.

4. On the date of David A. Egelhoff's death, he had in full force and effect a Life Insurance policy administered through his employer, the Boeing company or a subsidiary.

5. On the date of David A. Egelhoff's death, the named beneficiary on that Life Insurance policy was Donna RAE Egelhoff .

6. Within a few months of David Egelhoff's death, Donna RAE Egelhoff claimed and received the Life Insurance proceeds from that Life Insurance policy described above in the approximate amount of Forty-Six Thousand Dollars ($46,000).

7. Defendant, Donna RAE Egelhoff's, claim for and receipt of these Life Insurance proceeds was unlawful because her rights to her proceeds was revoked by operation of law upon the date of her divorce some three months prior to the date of David Egelhoff's death, pursuant to RCW 11.07.011.

8. The rightful heir and beneficiary to the Life Insurance proceeds are the natural children of David A. Egelhoff that being Samantha and David Egelhoff, plaintiffs.

9. David A. Egelhoff upon his death died intestate and an estate was opened styled "In The Matter Of The Estate of David A. Egelhoff, deceased" in Pierce County, Washington under cause number 94-4-01619-1.

10. As a result of Donna Egelhoff's claiming and receiving the Life Insurance benefits described above, the natural children of David A. Egelhoff were deprived of their rightful claim to the insurance proceeds by operation of law because they were the only heirs to David Egelhoff's Estate.

11. As a result of Donna Egelhoff's actions, in converting the Life Insurance proceeds to her own, the children and plaintiffs herein were damaged in an amount exceeding Forty-Six Thousand Dollars ($46,000).

V. BASIS OF CAUSES OF ACTION

1. Defendant, Donna RAE Egelhoff, unlawfully converted the Life Insurance proceeds to her own when these proceeds belonged to the only heirs of David A. Egelhoff. Her claiming of these proceeds was unlawful because the beneficiary designation was revoked by operation of law pursuant to RCW 11.07.010. Pursuant to that law, Donna RAE Egelhoff's rights to the insurance proceeds became revoked upon the date of the divorce decree which date was 76 days before David A. Egelhoff's death.

VI. DAMAGES

1. As a direct result of Donna RAE Egelhoff's unlawful claim and receipt of the Life Insurance proceeds, plaintiffs were injured in an amount exceeding Forty-Six Thousand Dollars ($46,000) by being deprived of their rightful claim to the insurance proceeds.

PRAYER

WHEREFORE, plaintiffs pray for relief against the defendants as follows:

1. For judgment against the defendants in an amount exceeding Forty-Six Thousand Dollars ($46,000) to be proven at the time of trial;

2. For plaintiffs costs and disbursements herein to be incurred and taxed.

3. For plaintiffs reasonable attorneys' fees incurred herein;

4. For such other and further relief as court may deem just and equitable in the premises.

DATED this 15th day of November, 1996.

JORDAN, IMLER & McGOVERN

/s/ Michael W. Jordan
MICHAEL W. JORDAN, WSB #16906

AETNA
80 Lamberton Rd.
Windsor, CT 06095

August 4, 1994

Ms. Donna R. Egelhoff
7530 Olympus
Tacoma, WA 98466

RE: Insured: David A. Egelhoff
SS#: 569-70-6114
Date of Loss: 7/8/94

Dear Ms. Egelhoff:

The Boeing Company has informed us of your ex-spouse's death, and we wish to express our sincere sympathy.

Enclosed is our draft for $23,000.00 in part settlement of the Group Life Insurance Proceeds due under Boeing Contract Number GL 714.

The claim for the Accidental Death Benefit will be investigated. We will need to obtain a copy of the police/accident report. If you should have a copy, please forward it to us in the envelope enclosed. If you do not have a copy of this report, please complete and sign the attached Authorization for Release of Information, and return said form to us using the envelope provided. We will subsequently order a copy of the report, and when a decision has been reached, we will advise you.

If, in the meantime, you should have any questions, please feel free to contact us at 1-800-523-5065.

Sincerely,

/s/ Lori J. Dupre

Lori J. Dupre, HIA
Life Claim Examiner
Aetna Life Insurance Company

cc: The Boeing Company

SUPERIOR COURT OF WASHINGTON
COUNTY OF PIERCE
WPF DR 04.0300 (8/91)

NO. 93-3-06226-4

In re the Marriage of:

DONNA RAE EGELHOFF

Petitioner

and

DAVID ARCHER EGELHOFF

Respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW (FNFCL)

[Filed Apr. 22, 1994]

* * * *

3.2 The parties should be granted a decree:

[x] of dissolution.
[ ] of legal separation.
[ ] declaring the marriage invalid.
[ ] declaring the marriage valid.

* * * *

3.4 PROPERTY TO BE AWARDED THE HUSBAND.

[ ] Does not apply.
[x] The husband should be awarded as his separate property the property set forth in Exhibit "A". This exhibit is attached or filed and incorporated by reference as part of these findings.

[x] The husband should be awarded as his separate property the following property (list real estate, furniture, vehicles, pensions, insurance, bank accounts, etc.): all property acquired after the date of the separation of the parties.

3.5 PROPERTY TO BE AWARDED THE WIFE.

[ ] Does not apply.

[x] The wife should be awarded as her separate property the property set forth in Exhibit "A". This exhibit is attached or filed and incorporated by reference as part of these findings.

[x] The wife should be awarded as her separate property the following property (list real estate, furniture, vehicles, pensions, insurance, bank accounts, etc.): all property acquired after the date of the separation of the parties.

* * * *

DATED: 4-22-94

/s/ Stephan Downing
Judge/Commissioner
STEPHAN D. DOWNING

Presented by:
/s/ Donna Egelhoff
DONNA RAE EGELHOFF
Petitioner, pro se

Approved for entry:
/s/ David Archer Egelhoff
DAVID ARCHER EGELHOFF
Respondent, pro se

EXHIBIT "A"

The husband:

His personal possessions and any property acquired since the date of the parties' separation.

1966 Mustang fastback and 1966 Mustang coupe, 4,500

1969 Ford pickup, 500

#55 Dwarfcar racecar and all interest and assets related to the racing of said car

Double bed and linens, queen sleeper sofa, naugahyde recliner, beige area rug, 386 computer, printer and mouse, Kenmore chest freezer, Amana microwave, Kenmore washer/dryer, yellow compactor, all kitchen appliances

100% of his Boeing retirement 401K and IRA

100% of his business known as Eagle Aviation

2 shares of Weyerhauser stock

Black and tan Daschound known as Rogue, red Daschound known as Gertie

All household goods currently in his possession and all property owned by him prior to the marriage.

Two and one half acres, market value 7,500, near Chehalis, Lewis County, Washington.

Real property, market value $85,000, located at 8124 Woodland Ave East, Puyallup, WA; and legally described as:

The South feet of the East 528 feet of the South half of the North half of the Northeast Quarter of the Northeast

Quarter in section 31, Township 20 North, Range 4 East of the W.M.; Except the South 63 feet of the East 250 feet thereof, and Except the North 90 feet of the East 250 feet thereof, and Except the North 75 feet of the West 278 feet thereof, and Except Woodland Avenue, also known as 70th Avenue East;

Situate in the County of Pierce, State of Washington.

The wife:

Her personal possessions and any property acquired since the date of the parties' separation.

3,500 for her equity in the family home. This shall be paid by April 1, 1997, or upon the distribution of funds from the sale of the house, whichever occurs first.

1988 Hyundai, MV $1,200

27" Zenith Television, Hitachi VCR, triple bookcase, exercycle, cloth covered recliner

100% of her Massage Therapy business

Edward D. Jones IRA

ARC stock

Black and tan female Daschound known as Peppy

All household goods currently in her possession and all property acquired prior to the marriage

IBM 486 Compatible, monitor and printer

BOEING 1993 Edition

Disability and Life Plans

* * * *

Disability and Life Insurance Plans

Foreword

This section describes the disability and life insurance coverages that may be available to you as an eligible hourly employee of The Boeing Company. Described in the pages that follow are the Weekly Disability Benefit Plan, the Life Insurance Plan, the Survivor Income Benefit Plan, and the Accidental Death & Dismemberment Benefit Plan. Together, these plans are designed to provide you and your family with a greater measure of financial security in the event you are disabled or die.

This section is a summary of major features of these plans as of January 1, 1993.

* * * *

Life Insurance Plan

Benefits

Your life insurance benefit is $23,000. The benefit will be paid to your beneficiary in the event of your death, regardless of the cause, time or place, while you are covered under this Plan.

Benefits will be paid to your beneficiary in either a lump sum or through installments. You may change your beneficiary any time by filing the appropriate change-of-beneficiary form that is available from the Boeing Group Insurance Office.

* * * *

Accidental Death & Dismemberment Benefit Plan

Benefits

This Plan provides benefits to your beneficiary in the event of your death, or to you in the event of the loss of your limbs or eyesight, if your death or loss is caused by an accidental injury to the body (including an occupational injury). The following benefits are payable if the injury occurs while you are covered under the Plan, and your death or loss occurs within 90 days of the injury.

In the event of your death, your beneficiary will receive the full principal sum of $23,000. This amount is in addition to any amount payable under the Life Insurance Plan or the Survivor Income Benefit Plan. Your beneficiary under the Accidental Death & Dismemberment Benefit Plan is the same as the beneficiary you have designated under the Life Insurance Plan.

* * * *

Liability for Plan Benefits

The contracts between Boeing and Aetna Life Insurance Company provide that Aetna will make all benefit determinations under the plans described in this booklet.

Under the contract for the Weekly Disability Benefit Plan, Boeing pays benefits up to a specified aggregate amount in a given month from its assets. The benefits are insured and are thereby Aetna's liability only to the extent that benefit payments exceed the specified aggregate monthly amount.

Aetna has liability for all benefit payments under the Life Insurance Plan, Survivor Income Benefit Plan, and Accidental Death & Dismemberment Benefit Plan. ■

* * * *

Voluntary Investment Plan

Foreword

* * * *

This section has been prepared for you as a summary of the major Plan features as of January 1, 1993. You are encouraged to review this Plan summary and to consider the investment opportunities and tax advantages that may be available through the Plan. After considering your own personal circumstances, you may wish to discuss participation in the VIP with a personal tax advisor or legal counsel.

* * * *

Benefits

You are entitled to full benefits in your VIP accounts under the following circumstances:

1. You retire from Boeing under a Company-sponsored retirement plan.
2. You terminate your employment with Boeing at or after age 65.
3. You are laid off for 31 or more continuous days.
4. You go on active duty with the U.S. armed forces for 91 or more days.
5. You terminate because of total disability as determined by the Voluntary Investment Plan Committee.

You also are entitled to full benefits if you have five or more years of vesting service with the Company. Vesting means that if you leave the Company, you have a guaranteed right to a portion or all of the funds in the VIP that were contributed by the Company on your behalf.

If you leave the Company for reasons other than those noted above and you have less than five years of vesting service, you will receive funds from your Company account according to the vesting schedule (Exhibit 4). You forfeit any portion of your Company account that is not vested when your benefits are distributed to you.

* * * *

Death Benefits

In the event of your death, your designated beneficiary will be entitled to the full value of all your accounts, including your Company matching accounts. Death benefits become payable as of the first day of the month following the date of death.

Since VIP funds of a deceased Plan member are withdrawn from the investment trust fund pending payment to the beneficiary, these benefits will not be subject to gains or losses that occur between the first day of the month following the death and the time the beneficiary receives payment. Your beneficiary may be eligible to defer receipt of your account balance, as explained on page 5-13.

Beneficiary Designations

You may designate a beneficiary to receive your VIP benefits in the event of your death, or change an earlier designation, by completing the appropriate beneficiary form provided by the VIP Office. If you are married and wish to designate someone other than your spouse as your beneficiary, federal

law requires that you receive the written consent of your spouse on the beneficiary designation form and that the spouse's signature be witnessed by a Notary Public or a VIP representative.

The VIP Office will only recognize beneficiary designations and changes that are filed on the official VIP beneficiary designation form and received before your death. You may not designate or change a beneficiary by using other documents such as divorce decrees, prenuptial agreements, wills or trusts. If you have not designated a beneficiary on the appropriate form, you have an invalid beneficiary designation, or your beneficiary is no longer living, benefits will be paid in the following sequence:

1. To your surviving spouse.
2. If there is no surviving spouse, to your children in equal shares.
3. To another relative designated by the Voluntary Investment Plan Committee or to your estate.

* * * *

Supreme Court, U.S.
FILED
AUG 11 2000
CLERK

(9)

No. 99-1529

IN THE

Supreme Court of the United States

DONNA RAE EGELHOFF,

Petitioner,

v.

SAMANTHA EGELHOFF, A MINOR, BY AND THROUGH HER NATURAL PARENT KATE BREINER, AND DAVID EGELHOFF,

Respondents.

On Writ Of Certiorari To The Supreme Court Of Washington

BRIEF FOR PETITIONER

HENRY HAAS
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(253) 627-1181

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Counsel of Record
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1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 955-8500

Counsel for Petitioner

79pp

QUESTIONS PRESENTED

1. Whether the Employee Retirement Income Security Act, 29 U.S.C. §§ 1001 *et seq.* ("ERISA"), preempts the use of state law to override ERISA beneficiary designations made pursuant to the terms of ERISA plans.

2. Whether ERISA's anti-alienation provision, 29 U.S.C. § 1056(d)(1), which generally precludes alienation or assignment of ERISA pension plan benefits, preempts state laws that purport to deprive designated ERISA beneficiaries of their benefits under an ERISA pension plan.

PARTIES TO THE PROCEEDING

The caption contains the names of all of the parties to the proceeding in the court below.

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BRIEF FOR PETITIONER

OPINIONS BELOW

The opinion of the Supreme Court of Washington (Pet. App. 1a-28a) is reported at 139 Wash. 2d 557, 989 P.2d 80 (1999). The opinion of the Court of Appeals of Washington (Pet. App. 29a-44a) is reported at 93 Wash. App. 314, 968 P.2d 924 (1998). The summary judgment orders of the Superior Court of Washington for Pierce County (Pet. App. 45a-46a, 47a-48a) are not reported.

JURISDICTION

The judgment of the Supreme Court of Washington was entered on November 18, 1999. This Court granted the petition for a writ of certiorari on June 19, 2000. The jurisdiction of this Court rests upon 28 U.S.C. § 1257(a).

In their brief in opposition, Respondents argued that the judgment below is not final for purposes of this Court's jurisdiction under 28 U.S.C. § 1257(a) because "it remains to be seen" whether the state trial court will comply with the mandate of the Supreme Court of Washington awarding Respondents the ERISA plan benefits at issue here. Br. in Opp. 4. As this Court correctly recognized in granting certiorari, Respondents' finality argument is without merit.

The law is clear that a state supreme court's judgment is not deprived of finality merely because the state trial court retains authority to implement the appellate court's mandate. *See, e.g.*, *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 306-07 (1989) (finality requirement satisfied where "all that remains is the straightforward application of [the state appellate court's] clear directive . . . ."); *Pope v. Atlantic Coast Line R.R. Co.*, 345 U.S. 379, 382 (1953) (finality requirement satisfied where "nothing remains to be done but the mechanical entry of judgment by the trial court"); *see generally* R. STERN ET

AL., SUPREME COURT PRACTICE § 3.6 (7th ed. 1993). The court below squarely and unambiguously held that "Respondents . . . are entitled to receive the benefits under [David Egelhoff's] pension plan and the proceeds of his life insurance." Pet. App. 28a. As between the parties to this case, therefore, there is nothing more to be decided in the state courts, and the judgment below is final.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Pursuant to this Court's Rule 24.1(f), the pertinent constitutional and statutory provisions are set forth in the appendix to this brief.

STATEMENT OF THE CASE

I. Factual Background

Petitioner Donna Rae Egelhoff is the former spouse of David A. Egelhoff. During their marriage, Mr. Egelhoff was employed by The Boeing Company. Boeing provided Mr. Egelhoff certain employee benefits pursuant to benefit plans subject to ERISA, including life and accidental death insurance plans (collectively, the "insurance plans") and a pension plan. Mr. Egelhoff designated Petitioner as his beneficiary under these ERISA plans. Pet. App. 2a-3a. The plan documents for both the insurance plans and the pension plan specify that, in the event of a participant's death, plan benefits are to be paid to the person listed on the participant's designated beneficiary form on file with the plan administrator.[1]

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[1] *See* J.A. 35 ("The [life insurance] benefit will be paid to [the plan participant's] beneficiary in the event of [his or her] death. . . . [The plan participant] may change [his or her] beneficiary any time by filing the appropriate change-of-beneficiary form that is available from the Boeing Group Insurance Office."); J.A. 36 ("In the event of [the plan partici-

[Footnote continued on next page]

Mr. Egelhoff and Petitioner separated in 1993 and filed for divorce later that year. Pet. App. 2a-3a; Clerk's Papers (No. 94-4-01619-1) at 87. Their divorce was finalized by a decree of dissolution entered on April 22, 1994. J.A. 31-34. The decree of dissolution listed the property awarded to Mr. Egelhoff, including "100% of his Boeing retirement 401K and IRA," but it did not mention the insurance plans, nor did it purport to address the rights of beneficiaries under any of the ERISA plans. Pet. App. 3a; J.A. 31-34.

Thereafter, Mr. Egelhoff was injured in an automobile accident and ultimately died intestate. At the time of his death, Petitioner was the designated beneficiary of his insurance and pension plan benefits. Pet. App. 4a.

II. Proceedings Below

Respondents, who are Mr. Egelhoff's children from a prior marriage, are his statutory heirs under Washington state law. Respondents asserted claims against Petitioner in two separate proceedings in Washington state court seeking the insurance and retirement benefits payable under the Boeing-sponsored ERISA plans, notwithstanding the fact that Petitioner was the designated beneficiary of those plans. Pet. App. 4a-6a; J.A. 24-28 (insurance plans); Clerk's Papers (No. 94-4-01619-1) at 1-2 (pension plan). Respondents' claim of entitlement to those ERISA plan benefits was based on a Washing-

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[Footnote continued from previous page]

pant's accidental] death, [the plan participant's] beneficiary will receive the full principal sum . . . ."); J.A. 39-40 ("In the event of [the plan participant's] death, [his or her] designated beneficiary will be entitled to the full value of all [of his or her] [pension plan] accounts . . . . The [pension plan] Office will only recognize beneficiary designations and changes that are filed on the official [pension plan] beneficiary designation form . . . .").

ton statute providing that employee benefit plan beneficiary designations made prior to a divorce are "revoked" and that employee benefit plan assets pass upon the employee's death as if the former spouse had predeceased the employee. WASH. REV. CODE § 11.07.010 (2)(a) & (5)(a).

After the parties stipulated to the relevant facts (Pet. App. 2a & n.2; J.A. 20-23), the state trial courts granted summary judgment for Petitioner in both cases. Pet. App. 45a-46a, 47a-48a. The courts held that the Boeing employee benefit plans at issue "should be administered in accordance with [ERISA]" rather than § 11.07.010, and accordingly concluded that Petitioner, as "the designated beneficiary" under each of the plans, was entitled to "all legal rights" thereto. Pet. App. 46a, 48a.

Respondents appealed. The state court of appeals consolidated the two cases and reversed in a published opinion. Pet. App. 29a-44a; J.A. 2, 4. Noting the trial courts' holdings "that ERISA preempted state law" (Pet. App. 29a (footnote omitted)), the court of appeals expressly rejected that conclusion. The court placed principal reliance upon *Emard v. Hughes Aircraft Co.*, 153 F.3d 949 (9th Cir. 1998), *cert. denied*, 525 U.S. 1122 (1999), in which the Ninth Circuit approved another attempt to use state law to override an ERISA plan beneficiary designation. Pet. App. 37a-42a. The court of appeals held that "ERISA does not preempt [§] 11.07.010, a statute similar to the one at issue in *Emard*," and accordingly concluded that Respondents "are entitled to the proceeds" of the pension and insurance plans. *Id.* at 42a.

Petitioner sought review in the Supreme Court of Washington, which affirmed the judgment of the court of appeals. Pet. App. 1a-28a. The supreme court began its analysis by asserting that *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645 (1995), had "signaled a significant retreat from" the previously "expansive reading" of ERISA's

preemption provision. Pet. App. 12a. The court expressed the view that "ERISA's preemptive reach" has been limited to ordinary field and conflict preemption. Pet. App. 13a-14a (citing *California Div. of Labor Standards Enforcement v. Dillingham Constr., N.A.*, 519 U.S. 316, 336 (1997) (Scalia, J., concurring)).

The supreme court then addressed Respondents' claim of entitlement to the proceeds of David Egelhoff's insurance plans. Pet. App. 15a-17a. Noting that the insurance plans are "welfare benefit plan[s]" rather than "pension benefit plan[s]," the court held that the plans are exempt from ERISA's anti-alienation provision, 29 U.S.C. § 1056(d), which requires "pension" plans to "include provisions prohibiting the alienation of 'pension' benefits." Pet. App. 16a-17a. The court concluded that § 11.07.010 is valid as applied to the insurance plans and that "Respondents . . . are entitled to the proceeds of [the] employment-based life insurance policy." Pet. App. 17a (citing *Mackey v. Lanier Collection Agency & Serv., Inc.*, 486 U.S. 825 (1988)).

The supreme court also determined that § 11.07.010 governs the distribution of David Egelhoff's pension plan benefits. Pet. App. 17a-27a. The court began its analysis of this issue by citing the Ninth Circuit's decision in *Emard* for the proposition that "'ERISA's preemption clause no longer has the power to transmute into a federal question every issue that brushes against the periphery of an ERISA plan.'" Pet. App. 18a (quoting 153 F.3d at 961). Against that backdrop, the court reasoned that "the mere fact that [§] 11.07.010 may operate upon the beneficiary designation in an ERISA plan is not of itself a sufficient connection to require preemption." Pet. App. 21a.

The supreme court also held that there is no conflict between § 11.07.010 and ERISA's anti-alienation provision, which it recognized was applicable to the pension plan. Pet. App. 17a, 23a-27a. In the court's view, even though the effect of § 11.07.010 is to nullify certain

beneficiary designations made in accordance with the terms of ERISA plans, the statute is saved from preemption by the fact that it does not nullify *all* aspects of a particular plan's benefit allocation scheme. *Id.* The court accordingly concluded that "Respondents . . . are entitled to receive the benefits under [David Egelhoff's] pension plan and the proceeds of his life insurance." *Id.* at 28a.

SUMMARY OF ARGUMENT

Revised Code of Washington § 11.07.010 is preempted by ERISA's express preemption provision, § 514(a), 29 U.S.C. § 1144(a), and by traditional principles of conflict preemption. Section 11.07.010 "relates to" and has a "connection with" an ERISA plan, and thus falls within the preemptive scope of § 514(a). In addition, § 11.07.010 directly conflicts with ERISA's text and purposes, thus requiring preemption for that reason as well.

I. ERISA § 514(a) preempts all state laws that "relate to" an ERISA plan. ERISA 514(a), 29 U.S.C. § 1144(a). As this Court has explained, a state law "relates to" an ERISA plan within the meaning of § 514(a) if it has a "connection with" such a plan, as determined by reference to "'the objectives of the ERISA statute as a guide to the scope of the state law that Congress understood would survive,' as well as to the nature of the effect of the state law on ERISA plans." *California Div. of Labor Standards Enforcement v. Dillingham Constr., N.A.*, 519 U.S. 316, 325 (1997) (citation omitted). Section 11.07.010 clearly has a prohibited "connection with" an ERISA plan when considered in light of these factors.

Section 11.07.010 purports to "revoke" ERISA plan beneficiary designations and to mandate payment of plan benefits to someone other than the designated beneficiary. It thus has a prohibited effect on ERISA plans by "mandat[ing] employee benefit structures or their

administration" and "bind[ing] plan administrators to [a] particular choice." *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 658, 659 (1995). Moreover, in contrast to the types of state laws that this Court has upheld against preemption challenges, § 11.07.010 directly regulates the determination of beneficiary status and the payment of ERISA plan benefits—functions that lie at the very heart of ERISA's concerns. Congress's intent that such a state law must yield to ERISA's preemptive reach is manifestly clear.

Section 11.07.010 also has a "connection with" an ERISA plan because it would lead to inconsistent state regulation of ERISA plans and thus frustrate ERISA's objective of "avoid[ing] a multiplicity of regulation in order to permit the nationally uniform administration of employee benefit plans," *Travelers*, 514 U.S. at 657. If states were permitted to enforce laws like § 11.07.010, ERISA plans would be prevented from employing a uniform administrative scheme for determining beneficiary rights, and would instead be required to determine beneficiary status and pay plan benefits in a different manner in different jurisdictions, depending on which state's law was thought to apply and on what effect the relevant state(s) had decided to give to a divorce decree. The administrative difficulties and uncertainties created by the need to monitor and comply with the often inconsistent laws of more than fifty jurisdictions regulating these core functions of ERISA plans would directly frustrate Congress's goal of "'ensur[ing] that plans and plan sponsors would be subject to a uniform body of benefits law.'" *Travelers*, 514 U.S. at 656 (citation omitted).

II. Section 11.07.010 is also preempted under traditional conflict preemption analysis because it "conflicts with the provisions of ERISA" and "operates to frustrate its objectives." *Boggs v. Boggs*, 520 U.S. 833, 841 (1997).

ERISA's primary objective is the protection of plan participants and their beneficiaries. "Th[is] general policy is implemented by ERISA's specific provisions." *Boggs*, 520 U.S. at 845. Thus, ERISA specifies that beneficiary status is to be determined by reference to the plan participant's beneficiary designation form or the terms of the plan. ERISA requires plan fiduciaries to administer ERISA plans in accordance with the applicable plan documents, which must specify the method for determining benefit payment rights and be available for review by plan beneficiaries. ERISA also provides that plan fiduciaries must administer plans for the exclusive benefit of plan participants and their beneficiaries, and provides beneficiaries with a federal cause of action to enforce compliance with the terms of the applicable ERISA plans. These provisions clearly establish Congress's intent that plan administrators must determine beneficiary status and distribute plan benefits by reference to the plan participant's designation of beneficiary pursuant to the terms of the plan documents. Section 11.07.010—by nullifying ERISA plan beneficiary designations and requiring payment of benefits to persons other than the designated beneficiary in violation of the terms of ERISA plan documents—directly conflicts with these specific provisions and with ERISA's policy of protecting beneficiaries.

With respect to the pension plan at issue here, § 11.07.010 is preempted for an additional reason: It conflicts with ERISA's anti-alienation provision, which requires that pension plan benefits "may not be assigned or alienated." ERISA § 206(d)(1), 29 U.S.C. § 1056 (d)(1). As this Court explained in *Boggs*, ERISA's prohibition against alienation "is mandatory and contains only two explicit exceptions . . . which are not subject to judicial expansion." *Boggs*, 520 U.S. at 851. Neither of those exceptions is implicated here. Thus, by purporting to require pension plan benefits to be transferred from the designated beneficiary, § 11.07.010 conflicts directly with ERISA's anti-alienation provision.

ARGUMENT

I. SECTION 11.07.010 IS PREEMPTED BY ERISA'S EXPRESS PREEMPTION PROVISION BECAUSE IT "RELATES TO" AN ERISA PLAN

ERISA's express preemption provision provides that ERISA "shall supersede any and all State laws insofar as they . . . relate to any employee benefit plan." ERISA § 514(a); 29 U.S.C. § 1144(a). Thus, any state law that "relates to" an ERISA plan must give way to ERISA's preemptive reach. This Court has "long acknowledged that ERISA's pre-emption provision is 'clearly expansive.'" *California Div. of Labor Standards Enforcement v. Dillingham Constr., N.A.*, 519 U.S. 316, 324 (1997) (quoting *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 655 (1995)). It has a "'broad scope,' and an 'expansive sweep,' and . . . it is 'broadly worded,' 'deliberately expansive,' and 'conspicuous for its breadth,'" *Dillingham*, 519 U.S. at 324 (citations omitted).[2] As this Court reaffirmed in *Travelers*, "§ 514 indicates Congress's intent to establish the regulation of employee welfare benefit plans 'as exclusively a federal concern.'" *Travelers*, 514 U.S. at 656 (citation omitted); *see also Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 523 (1981)

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[2] *See also* 120 CONG. REC. 29197 (1974) (statement of Rep. Dent) ("[ERISA] applie[s] this [preemption] principle in its broadest sense to foreclose any non-Federal regulation of employee benefit plans. Thus, [§ 514(a)] would reach any rule, regulation, practice or decision of any State . . . which would affect any [ERISA] plan."); 120 CONG. REC. 29933 (1974) (statement of Sen. Williams) ("This [preemption] principle is intended to apply in its broadest sense to all actions of State or local governments . . . which have the force or effect of law.").

("[Section 514] demonstrates that Congress intended to . . . establish pension plan regulation as exclusively a federal concern.").

A state law "relates to" an employee benefit plan within the meaning of § 514(a) if it has a "connection with" or "reference to" such a plan. *Dillingham*, 519 U.S. at 324 (citation omitted). This Court has rejected an "uncritical literalism" in interpreting the terms "relate to" and "connection with," because "[r]eally, universally, relations stop nowhere." *Travelers*, 514 U.S. at 655-56 (citation omitted); *id.* at 656 (just as "infinite relations cannot be the measure of pre-emption, neither can infinite connections"). Accordingly, to determine whether a state law has a "connection with" an ERISA plan, courts look both to "'the objectives of the ERISA statute as a guide to the scope of the state law that Congress understood would survive,' as well as to the nature of the effect of the state law on ERISA plans." *Dillingham*, 519 U.S. at 325 (quoting *Travelers*, 514 U.S. at 656, 658-59).

Revised Code of Washington § 11.07.010 plainly has a "connection with" ERISA plans when considered in light of these factors. The Washington statute purports to override ERISA plan beneficiary designations and to direct payment of plan benefits to someone other than the designated beneficiary. It thus has a prohibited "effect . . . on ERISA plans," *Dillingham*, 519 U.S. at 325 (citation omitted), by mandating plan administration and "bind[ing] plan administrators to [a] particular choice," *Travelers*, 514 U.S. at 659. Section 11.07.010 also has a "connection with" an ERISA plan because it would lead to inconsistent state regulation of ERISA plans and thus frustrate the "'objectives of the ERISA statute,'" *Dillingham*, 519 U.S. at 325 (citation omitted), "to avoid a multiplicity of regulation in order to permit the nationally uniform administration of employee benefit plans," *Travelers*, 514 U.S. at 657. Moreover, unlike the state laws that this Court has upheld against claims

of ERISA preemption in the past, § 11.07.010 directly regulates the determination of beneficiary status and the payment of ERISA plan benefits—functions that lie at the very heart of ERISA's concerns. Congress's intent that such a state law must yield to ERISA's preemptive reach is manifestly clear.[3]

A. Section 11.07.010 Has A "Connection With" An ERISA Plan Because It Mandates Plan Administration And Binds Plans To A Particular Choice Regarding Matters Of Core ERISA Concern

As this Court has explained, Congress clearly intended ERISA to preempt state laws that "mandate[] employee benefit structures or their administration." *Travelers*, 514 U.S. at 658. Directing the management of ERISA plans is thus one of the prohibited effects on ERISA plans that has a "connection with" such plans and requires preemption of state law. *Id.* If the state law "bind[s] plan administrators to any particular choice and thus function[s] as a regulation of an ERISA plan itself," the state law necessarily has a "connection with" an ERISA plan and is therefore preempted. *Travelers*, 514 U.S. at 659; *see also Dillingham*, 519 U.S. at 332-34 (concluding that a state prevailing wage law was not preempted because it "d[id] not bind ERISA plans to

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[3] Thus, it is not surprising that numerous courts have squarely held that ERISA preempts state laws purporting to nullify an ERISA plan beneficiary designation. *See, e.g.*, *Metropolitan Life Ins. Co. v. Pettit*, 164 F.3d 857, 865 (4th Cir. 1998); *Mattei v. Mattei*, 126 F.3d 794, 809 (6th Cir. 1997), *cert. denied*, 523 U.S. 1120 (1998); *Krishna v. Colgate Palmolive Co.*, 7 F.3d 11, 15 (2d Cir. 1993); *Metropolitan Life Ins. Co. v. Hanslip*, 939 F.2d 904, 906 (10th Cir. 1991); *Brown v. Connecticut General Life Ins. Co.*, 934 F.2d 1193, 1195 (11th Cir. 1991).

anything," was not "tantamount to a compulsion upon [ERISA plans], and "d[id] not dictate the choices[] facing ERISA plans").

It is readily apparent that § 11.07.010 has a "connection with" ERISA plans and is therefore preempted under the analysis employed in *Travelers* and *Dillingham*. By its express terms, § 11.07.010 purports to override an otherwise valid ERISA plan beneficiary designation by "revoking" upon divorce a participant's designation of his or her spouse as a plan beneficiary. Thus, § 11.07.010 attempts to bind a plan administrator to a particular choice of rules for determining beneficiary status, compelling the administrator to identify beneficiaries and pay ERISA plan benefits according to the approach dictated by state law, contrary to the beneficiary determination and benefit disbursement method set forth in the plan documents. Because § 11.07.010 would thereby mandate the administration of an ERISA plan, "bind[ing] [the] plan administrator[] to a[] particular choice," the state law clearly has a "connection with" an ERISA plan and is preempted. *Travelers*, 514 U.S. at 659.

Section § 11.07.010 not only seeks to mandate the administration of an ERISA plan, but it does so in a manner that strikes at the very heart of ERISA—the determination of beneficiary status and the disbursement of plan benefits to beneficiaries. Unlike the state prevailing wage law at issue in *Dillingham*, which involved issues "quite remote from the areas with which ERISA is expressly concerned," 519 U.S. at 330, the determination of beneficiary status pursuant to plan terms is a core administrative function of any ERISA plan. Indeed, as this Court has recognized, "the concept[] of . . . beneficiary" is part of the "axis around which ERISA's protections revolve," and "the principal object of the statute is to protect plan participants and beneficiaries." *Boggs v. Boggs*, 520 U.S. 833, 845, 854 (1997); *see* ERISA § 2(b), 29 U.S.C. § 1001(b) ("[It is] the policy of this

Act to protect . . . the interests of . . . beneficiaries" in ERISA plans); *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 9 (1987) (explaining that ERISA plans are "obligat[ed] . . . [to] determin[e] the eligibility of claimants").

Similarly, the payment of plan benefits to participants and beneficiaries in accordance with the terms of the applicable plan documents is fundamental to the operation of an ERISA plan and is a central concern of ERISA's statutory scheme. Section 404(a)(1) of ERISA, for example, provides that "a fiduciary shall discharge his duties with respect to a[n] [ERISA] plan . . . for the exclusive purpose of . . . providing benefits to participants and their beneficiaries; and . . . defraying reasonable expenses of administering the plan . . . ." 29 U.S.C. § 1104(a)(1); *see also* ERISA § 403(c)(1), 29 U.S.C. § 1103(c)(1) (plan assets, with limited exceptions, are "held for the exclusive purposes of providing benefits to participants in the plan and their beneficiaries and defraying reasonable expenses of administering the plan"); *Woodworker's Supply, Inc. v. Principal Mut. Life Ins. Co.*, 170 F.3d 985, 991 (10th Cir. 1999) ("the allocation of benefits under an employee benefits plan goes to the core of ERISA").

Indeed, the determination whether particular claimants are entitled to obtain plan benefits as beneficiaries is so crucial to the entire federal scheme created by ERISA that this Court has applied the doctrine of "complete preemption" to such claims. ERISA § 502(a)(1)(B) creates a federal cause of action for all claims seeking plan benefits, without regard to the underlying theory of the claim. *See* § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B) (granting beneficiaries a federal cause of action "to recover benefits due to [them] under the terms of [their] plan[s]"). As this Court has explained, "a suit by a beneficiary to recover benefits from a covered plan[] . . . falls directly under § 502(a)(1)(B) of ERISA, which provides an exclusive federal cause of action for resolution of such disputes." *Metropolitan Life*

Ins. Co. v. Taylor, 481 U.S. 58, 62-63 (1987). Section 502(a)(1)(B) "lies at the heart" of ERISA and authorizes removal to federal court of claims to recover ERISA plan benefits, even if the suit "purports to raise only state law claims." *Taylor*, 481 U.S. at 65, 67. Accordingly, claims under § 11.07.010 for recovery of ERISA plan benefits "arise[] under the . . . laws . . . of the United States" and are completely preempted "by virtue of the clearly manifested intent of Congress" in enacting ERISA. *Taylor*, 481 U.S. at 67 (citation omitted).[4]

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[4] The fact that Respondents' claims in this case were brought against the designated beneficiary rather than the plan administrator does not change the fact that Respondents are seeking to recover ERISA plan benefits within the meaning of § 502(a)(1)(B). On its face, § 502(a)(1)(B) applies to all claims for ERISA benefits, and is not limited to claims brought against particular defendants. Some lower courts have concluded that § 502(a)(1)(B) claims may be brought only against plans (*see, e.g.*, *Gelardi v. Pertec Computer Corp.*, 761 F.2d 1323 (9th Cir. 1985)), but that conclusion is of questionable validity after this Court's decision in *Harris Trust & Sav. Bank v. Salomon Smith Barney, Inc.*, 120 S. Ct. 2180 (2000). *See id.* at 2187 (permitting § 502(a)(3) claims against non-fiduciaries because "§ 502(a)(3) [like § 502(a)(1)(B)] admits of no limit . . . on the universe of possible defendants"). In any event, regardless of whether § 502(a)(1)(B) authorizes suits against defendants other than ERISA plans, lawsuits seeking to recover ERISA benefits are subject to the complete preemption doctrine even if they name an improper defendant. *See Jass v. Prudential Health Care Plan, Inc.*, 88 F.3d 1482, 1488-90 (7th Cir. 1996) (applying doctrine of complete preemption to permit removal of purported state-law claim, and then dismissing the claim on the ground that it was brought against an improper party under § 502(a)(1)(B)). Plainly, the applicability of ERISA preemption cannot vary depending on whether a plaintiff seeking to use state law to override an ERISA plan beneficiary designation sues the plan itself or instead sues the recipient of bene-

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Thus, Congress made clear in ERISA that the determination of beneficiary status and the payment of plan benefits to participants and beneficiaries are central to ERISA's protections and concerns. Congress intended to protect plan benefit entitlements, not only for participants, but also for any beneficiary "designated by a participant, or by the terms of an employee benefit plan, who is or may become entitled to a benefit thereunder." ERISA § 3(8), 29 U.S.C. § 1002(8). By directing the manner in which a plan administrator must perform the core administrative function of determining and paying the beneficiary, § 11.07.010 has a "connection with" an ERISA plan in that it "mandat[es] employee benefit structures or their administration." *Travelers*, 514 U.S. at 658.[5]

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fits under the plan. Indeed, it is purely fortuitous that Respondents did not sue the plan administrator in this case, as they did in *Egelhoff v. Aetna Life Ins. Co.*, No. 99-2-08735-1 (Wash. Super. Ct., Pierce County, filed June 17, 1999). *See infra* note 13.

[5] The Supreme Court of Washington's reliance on *Mackey v. Lanier Collection Agency & Serv., Inc.*, 486 U.S. 825 (1988), is thus misplaced. *See* Pet. App. 17a. The *Mackey* Court held that "state-law methods for collecting money judgments must, as a general matter, remain undisturbed by ERISA." *Mackey*, 486 U.S. at 834. But there is a crucial difference between state laws that provide procedural mechanisms for satisfying money judgments, which Congress did not intend to preempt, and state laws, such as § 11.07.010, that attempt to mandate the determination of *beneficiary status and rights* under ERISA plans. As discussed above, the determination of beneficiary status and the payment of plan benefits are core ERISA plan functions, which Congress clearly did not intend to permit state laws to usurp. As the *Mackey* Court was careful to point out, the state garnishment law in that case was merely "a 'procedural' mechanism for

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The state laws at issue in *Dillingham* and *Travelers*, by contrast, were addressed to "areas where ERISA has nothing to say," *Dillingham*, 519 U.S. at 330, and did not compel plans to do anything. In *Dillingham*, the state prevailing wage law created an economic incentive for apprenticeship programs to satisfy the state's apprenticeship program requirements so that apprentices participating in their programs would be eligible to work on public works projects at a lower wage. As the *Dillingham* Court explained, the state's "prevailing wage statute alter[ed] the incentives, but d[id] not dictate the choices, facing ERISA plans." *Dillingham*, 519 U.S. at 334. Similarly, the state law in *Travelers*, which provided economic incentives to purchase Blue Cross/Blue Shield insurance, had "an indirect economic effect on choices made by insurance buyers, including ERISA plans . . . [but did] not bind plan administrators to any particular choice." *Travelers*, 514 U.S. at 659.

Section 11.07.010 plainly has far more than an "indirect economic effect" on ERISA plans. Because the Washington statute purports to compel plan administrators to determine beneficiary status and dispense benefits in a manner prescribed by state law, § 11.07.010 is similar to state laws that this Court has found preempted for "mandat[ing] employee benefit structures or their administration." *Travelers*, 514 U.S. at 657-58 (citing *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 97 (1983), *FMC Corp. v. Holliday*, 498 U.S. 52, 60 (1990), and *Alessi v. Raybestos-Manhattan, Inc.*, 451

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the enforcement of judgments," and "d[id] not create the rule of decision in any case affixing liability." *Id.* at 835 n.10. Section 11.07.010, by contrast, is not a mere "procedural mechanism," but rather purports to supply the "rule of decision" for the core ERISA plan functions of determining beneficiary status and rights.

U.S. 504, 524 (1981)). In *Shaw*, for example, the state law at issue was preempted because it had the effect of requiring ERISA plans to pay specific benefits. *Shaw*, 463 U.S. at 97. In *Shaw*, *Holliday*, and *Alessi*, ERISA preempted state laws that attempted to prevent ERISA plans from structuring themselves to pay benefits in a certain manner. *Shaw*, 463 U.S. at 97; *Holliday*, 498 U.S. at 60; *Alessi*, 451 U.S. at 524. Like these laws, § 11.07.010 operates to require ERISA plans to pay certain benefits, and prevents ERISA plans from structuring their benefit payment systems in a certain manner. Consequently, § 11.07.010 has a "connection with" ERISA plans and is preempted.

B. Section 11.07.010 Has A "Connection With" An ERISA Plan Because It Interferes With The Nationally Uniform Administration Of Employee Benefit Plans

Section 11.07.010 also has a "connection with" ERISA plans because it would frustrate Congress's intent in ERISA "'to ensure that plans and plan sponsors would be subject to a uniform body of benefits law.'" *Travelers*, 514 U.S. at 656 (citation omitted). This core ERISA purpose—to ensure national uniformity in ERISA plan administration—is one of the "objectives of the ERISA statute [that serves] as a guide to the scope of the state law that Congress understood would survive," and to which courts must look in determining whether a state law has a "connection with" an ERISA plan. *Travelers*, 514 U.S. at 656.

As this Court explained in *Travelers*, "[t]he basic thrust of the pre-emption clause . . . was to avoid a multiplicity of regulation in order to permit the nationally uniform administration of employee benefit plans." *Travelers*, 514 U.S. at 657. ERISA preemption seeks to ensure that plan sponsors and administrators are subject to uniform regulation of employee benefit plans in each of the fifty States without the administrative and financial burden of complying with a hodgepodge of differing

and inconsistent state and local regulations. "'[T]he goal was to minimize the administrative and financial burden of complying with conflicting directives among States or between States and the Federal Government . . . [and to prevent] the potential for conflict in substantive law . . . requiring the tailoring of plans and employer conduct to the peculiarities of the law of each jurisdiction.'" *Travelers*, 514 U.S. at 656-57 (citation omitted).[6]

Because Congress intended ERISA to ensure uniformity in benefits regulation, this Court has "not hesitated to enforce ERISA's pre-emption provision where state law created the prospect that an employer's administrative scheme would be subject to conflicting requirements." *Fort Halifax*, 482 U.S. at 10. In *Shaw*, for example, ERISA preempted state law that would have exposed ERISA plans to inconsistent state regulation, requiring an ERISA plan either to structure all of its benefit payments in accordance with the state law, or to adopt different payment methods for beneficiaries inside and outside of the state. *Shaw*, 463 U.S. at 97; *see also Alessi*, 451 U.S. at 524 (same); *Holliday*, 498 U.S. at 60

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[6] This objective is highlighted in the legislative history of ERISA. *See, e.g.*, 120 CONG. REC. 29197 (1974) (statement of Rep. Dent) (describing ERISA's "crowning achievement" as the "reservation to Federal authority the sole power to regulate the field of employee benefit plans. With the preemption of the field, [ERISA] round[s] out the protection afforded participants by eliminating the threat of conflicting and inconsistent State and local regulation. . . ."); 120 CONG. REC. 29933 (1974) (statement of Sen. Williams) ("It should be stressed that with the narrow exceptions specified in [ERISA], the substantive and enforcement provisions . . . are intended to preempt the field for Federal regulations, thus eliminating the threat of conflicting or inconsistent State and local regulation of employee benefit plans.").

(preempting a state law that would have "frustrate[d] plan administrators' continuing obligation to calculate uniform benefit levels nationwide").

As in *Shaw*, *Holliday*, and *Alessi*, validation of state laws like § 11.07.010 would impose inconsistent state requirements on the administration of ERISA plans and thereby frustrate ERISA's clear purpose to "secur[e] national uniformity in the administration of employee benefit plans," *Boggs*, 520 U.S. at 842. As this Court explained in *Fort Halifax*:

> An employer that makes a commitment systematically to pay certain benefits undertakes a host of obligations, such as determining the eligibility of claimants . . . [and] making disbursements . . . . The most efficient way to meet these responsibilities is to establish a uniform administrative scheme, which provides a set of standard procedures to guide processing of claims and disbursement of benefits. Such a system is difficult to achieve, however, if a benefit plan is subject to differing regulatory requirements in differing States. A plan would be required to . . . process claims in a certain way in some States but not in others . . . .

Fort Halifax, 482 U.S. at 9.

Section 11.07.010 would create precisely the problems identified in *Fort Halifax* by requiring plans "to . . . process claims in a certain way in some States but not in others." 482 U.S. at 9. The ERISA plans at issue here employ a uniform administrative scheme with a standard procedure to guide processing of claims and disbursement of benefits: In the event of the participant's death, benefits are to be paid to the person named on the beneficiary designation form on file with the plan

administrator.[7] Section 11.07.010, however, would disrupt this uniform scheme by overriding ERISA plan beneficiary designations and requiring disbursement of funds to persons other than the designated beneficiary in circumstances where Washington state law applies. If states were permitted to enforce such laws, ERISA plans would be required to determine beneficiary status and pay plan benefits in a different manner in different jurisdictions, depending on which state's law is thought to apply and on whether the state has adopted a statute like § 11.07.010, a different statutory scheme, or none at all.[8]

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[7] *See* J.A. 35 ("The [life insurance] benefit will be paid to [the plan participant's] beneficiary in the event of [his or her] death. . . . [The plan participant] may change [his or her] beneficiary at any time by filing the appropriate change-of-beneficiary form that is available from the Boeing Group Insurance Office."); J.A. 36 ("In the event of [the plan participant's accidental] death, [the plan participant's] beneficiary will receive the full principal sum . . . ."); J.A. 39-40 ("In the event of [the plan participant's] death, [his or her] designated beneficiary will be entitled to the full value of all [of his or her] [pension plan] accounts . . . . The [pension plan] Office will only recognize beneficiary designations and changes that are filed on the official [pension plan] beneficiary designation form . . . .").

[8] For example, some states might decide to have divorce operate as a revocation of all beneficiary designations, *see, e.g.*, MONT. CODE ANN. § 72-2-814, while others might decide to create an exception for specific types of property, *compare, e.g.*, VA. CODE ANN. § 20-111.1 (exception for trusts), *with, e.g.*, 760 ILL. COMP. STAT. 35/1 (applies only to trusts). In addition, some states might apply the revocation only to former spouses, *see, e.g.*, OKLA. STAT. ANN. tit. 15, § 178, while others might revoke the beneficiary designations made in favor of the relatives of former spouses as well, *see, e.g.*, MONT. CODE ANN. § 72-2-814. Some might create exceptions if the divorce decree specifically says otherwise,

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Thus, § 11.07.010 would require ERISA plans "to accommodate conflicting regulatory schemes in devising and operating a system for processing claims and paying benefits—*precisely the burden that ERISA pre-emption was intended to avoid*." *Fort Halifax*, 482 U.S. at 10 (emphasis added).[9] Because § 11.07.010 (and other state laws that purport to override an ERISA plan beneficiary designation) would "result[] in a complex set of requirements varying from State to State . . . [this] result [would not] accord[] with [ERISA's] statutory scheme." *Boggs*, 520 U.S. at 851. The Washington state statute therefore has a "connection with" an ERISA plan and is preempted.[10]

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see, e.g., OHIO REV. CODE ANN. § 1339.63, or if the beneficiary designation expresses a contrary intent, *see, e.g.*, MO. REV. STAT. § 461.051, or if the beneficiary designation was made after the divorce, *see, e.g.*, OKLA. STAT. ANN. tit. 15, § 178, or if the plan participant and former spouse remarry, *see, e.g.*, OHIO REV. CODE ANN. 1339.63.

[9] Indeed, as discussed below, *see infra* at 31, ERISA requires plan fiduciaries to administer plans in accordance with the relevant plan documents, ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D), which must specify in writing the method for determining beneficiary status and distributing plan benefits, ERISA §§ 402(a)(1), (b)(4), 29 U.S.C. §§ 1102(a)(1), (b)(4). These provisions enable ERISA plans to determine and pay beneficiaries by looking only to the terms of the plan and the valid beneficiary designation forms on file, and thus lead to the uniform and cost-effective administration of plans intended by Congress.

[10] Numerous court of appeals decisions support this view. *See, e.g.*, *Krishna v. Colgate Palmolive Co.*, 7 F.3d 11, 16 (2d Cir. 1993) ("There is a strong interest in uniform, uncomplicated administration of ERISA plans, many of which function in a number of states. . . . It would be counterproductive to compel the Policy administrator to look beyond

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C. Neither The Traditional Role Of States In Regulating Domestic Relations Law Nor The Nature Of The Burdens Imposed On Plans Saves § 11.07.010 From Preemption

Despite the fact that § 11.07.010 would mandate the administration of an ERISA plan, bind the plan administrator to a particular choice, and frustrate Congress's intent to foster the nationally uniform administration of ERISA plans—each of which separately requires pre-emption—the Washington Supreme Court in this case held that the burden on ERISA plans "is too slight to overcome the presumption against preemption of state family and family property law." Pet. App. 21a-22a (citation and internal quotation marks omitted). In fields of

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[ERISA plan beneficiary] designations into varying state laws regarding wills, trusts and estates, or domestic relations to determine the proper beneficiaries of Policy distributions.") (citation omitted); *Metropolitan Life Ins. Co. v. Pettit*, 164 F.3d 857, 863-64 (4th Cir. 1998) (if state law were permitted to trump an ERISA plan beneficiary designation, "[it] would directly conflict with ERISA's goal of providing a nationally uniform plan administration .... [and] would also reduce the certainty of plan administration and increase litigation, along with associated costs. . . . *There could hardly be a more striking example of a state claim hindering the full accomplishment of congressional objectives.*") (emphasis added); *McMillan v. Parrott*, 913 F.2d 310, 312 (6th Cir. 1990) (preemption of state law purporting to oust a designated beneficiary "fulfills the intent of Congress that ERISA plans be uniform in their interpretation and simple in their application"); *Emard v. Hughes Aircraft Co.*, 153 F.3d 949, 963 (9th Cir. 1998) (Hall, J., concurring in part and dissenting in part) (permitting state law to affect ERISA plan beneficiary designations undermines "the intent of Congress that ERISA plans be uniform in their interpretation and simple in their application").

traditional state regulation, courts "work[] on the 'assumption that the historic police powers of the States [are] not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.'" *Travelers*, 514 U.S. at 655 (citation omitted). But, as this Court's precedents make clear, "ERISA certainly contemplated the pre-emption of substantial areas of traditional state regulation." *Dillingham*, 519 U.S. at 330. One such area is "the regulation of employee welfare benefit plans," which "Congress[] inten[ded] to establish . . . 'as exclusively a federal concern.'" *Travelers*, 514 U.S. at 656 (citation omitted).

As the above discussion demonstrates, in circumstances such as those presented here—where a state law purports to override an ERISA plan's determination of beneficiary status and direct the payment of ERISA plan benefits in a manner contrary to the terms of the plan, thereby mandating ERISA plan administration and subjecting plans to a multiplicity of inconsistent regulation—Congress's intent that ERISA supersede such state law is clear and manifest. *See Travelers*, 514 U.S. at 656, 658. Indeed, where Congress felt it appropriate to permit state domestic relations law to intrude into the realm of ERISA beneficiary designations and rights, it enacted a precisely tailored and specific means of achieving that end. Under § 514(b)(7) of ERISA, a state court domestic relations order that meets the specific and detailed criteria of ERISA § 206(d)(3)(B)(i) is deemed a "qualified domestic relations order" ("QDRO") and is exempted from the scope of ERISA's express preemption provision. ERISA § 514(b)(7), 29 U.S.C. § 1144(b)(7) ("[the preemption provision] shall not apply to qualified domestic relations orders").[11]

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[11] As Respondents have correctly conceded, the divorce decree in this case does not qualify as a QDRO. *See* Respon-

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Congress's decision to create a limited exception to ERISA preemption in order to permit this carefully circumscribed type of state-law involvement in ERISA benefit allocation decisions confirms that, outside the context of QDROs, Congress intended ERISA to preempt all other attempts to use state domestic relations law to override ERISA plan beneficiary designations. *Inclusio unius, exclusio alterius*. *O'Melveny & Meyers v. F.D.I.C.*, 512 U.S. 79, 86 (1994).[12]

Contrary to the reasoning of the court below, moreover, the actual impact of § 11.07.010 on ERISA plans is far from the "'tenuous, remote, or peripheral' connection with covered plans" that Congress placed outside the scope of ERISA preemption. *District of Columbia v. Greater Wash. Bd. of Trade*, 506 U.S. 125, 130 n.1 (1992) (citation omitted). As discussed above, the de-

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dent's Br. in Wash. Ct. App. at 11 ("It is conceded in the present case, the decree of dissolution between David Egelhoff, decedent, and his wife in this matter, Donna Rae Egelhoff, does not specifically meet the qualifications of a domestic relations order, or 'QDRO.'").

[12] In enacting the QDRO exception to ERISA's express preemption provision, Congress made clear its intent that, outside this narrow category of state court decrees, state laws impinging on the regulation of ERISA plans would continue to be preempted. *See* H. R. REP. NO. 655, Part I, 98th Cong., 2d Sess. 42 (1984) ("The inclusion of this specific exception reflects the Committee's judgment that ERISA's preemption rules should be amended to this *limited* extent in order to resolve the problems which have arisen in the domestic relations area. In making these amendments to section 514, the Committee emphasizes that, except as expressly provided, nothing in the bill is intended to limit or otherwise change the original broad intent behind ERISA's rule of preemption.") (emphasis added).

termination of beneficiary status and the payment of plan benefits are core plan functions regulated by ERISA. Section 11.07.010, however, directs the administration of plans and usurps these core functions. This "connection with" an ERISA plan is not "slight," but rather is fundamental to ERISA's purposes of protecting beneficiaries and ensuring that they receive the benefits to which they are entitled.

The court below reasoned that "the mere fact that [§] 11.07.010 may operate upon the beneficiary designation in an ERISA plan is not of itself a sufficient connection to require preemption." Pet. App. 21a. According to the Washington Supreme Court, § 11.07.010 "does not alter the nature of the plan itself, the administrator's fiduciary duties, or the requirements for plan administration." *Id*. But by purporting to "revoke" a valid ERISA plan beneficiary designation and thereby override the determination of beneficiary status and disposition of ERISA plan benefits mandated by the terms of the plan, § 11.07.010 fundamentally alters the primary functions of the ERISA plan. The terms of the plan—requiring payment of benefits to the person named on the beneficiary designation form on file with the plan administrator—would be ignored; the administrator would have to choose between complying with state law or fulfilling the fiduciary duty to follow the terms of the plan; and the administration of the plan would be mandated by state law in violation of the plan.

Section 11.07.010 would have other enormously burdensome effects on ERISA plans as well. As discussed above, plan administrators would be required to administer their plans differently in different jurisdictions based on varying and potentially inconsistent state laws. In many instances, moreover, it would be difficult, if not impossible, for plan administrators to determine which state's law governed, given the possibility that the contesting claimants, the plan administrator, the divorce court, and the probate proceedings could be lo-

cated in two or more different states. Thus, ERISA plans would face the administrative and financial burden of researching, complying with, and potentially litigating over the applicability and meaning of numerous state laws purporting to override beneficiary designations under the terms of ERISA plans—contrary to Congress's intent in enacting ERISA's preemption clause. *See, e.g.*, Br. of the National Coord. Comm. for Multiemployer Plans as *Amicus Curiae* at 1-5, 7-8, 18-19; Br. of Western Conf. of Teamsters Pension Trust Fund as *Amicus Curiae* at 15-21.

Plan administrators, moreover, do not automatically receive notice of the divorce of a plan participant and designated beneficiary, and thus often lack knowledge of the very facts that may trigger the applicability of state divorce-revocation laws. In addition, ERISA plans would be threatened with the substantial risk that they might find themselves paying the same benefits twice, once to a beneficiary designated under the plan and a second time to a different recipient designated by state law.[13] Similarly, as discussed below, ERISA plan administrators and others may face liability under ERISA's provisions for failure to comply with the terms of the applicable plan or for breach of fiduciary duty if they administer the plan in accordance with the state statute rather than the governing plan documents. 29 U.S.C. §§ 1104(a)(1)(D), 1132(a).

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[13] Indeed, this case provides a perfect illustration of that risk. The administrator of David Egelhoff's insurance plans distributed the plan benefits to Petitioner in accordance with the valid beneficiary designation form on file with the plans. Respondents subsequently brought suit in state court against the administrator, seeking to compel it to pay them the full amount of the insurance benefits as well. *Egelhoff v. Aetna Life Ins. Co.*, No. 99-2-08735-1 (Wash. Super. Ct., Pierce County, filed June 17, 1999).

Thus, the Washington Supreme Court's conclusion that § 11.07.010's burdens are "too slight" to justify preemption cannot withstand scrutiny. Quite simply, § 11.07.010 mandates plan administration on matters that are at the heart of ERISA's concerns, "bind[s] plan administrators to a[] particular choice and thus functions as a regulation of an ERISA plan itself," and subjects ERISA plans to inconsistent state laws. For each of these reasons, § 11.07.010 has a "connection with" an ERISA plan and must yield to federal preemption under § 514(a).

II. SECTION 11.07.010 IS PREEMPTED BECAUSE IT CONFLICTS WITH ERISA'S PROVISIONS AND OBJECTIVES

"Conventional conflict pre-emption principles require pre-emption 'where compliance with both federal and state regulations is a physical impossibility, . . . or where state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" *Boggs*, 520 U.S. at 844 (citation omitted). Thus, where state law "conflicts with the provisions of ERISA or operates to frustrate its objectives," preemption is required even without regard to § 514(a)'s preemption provision. *Boggs*, 520 U.S. at 841. Because § 11.07.010 conflicts with both the text and the purposes of ERISA, it is preempted under traditional conflict preemption analysis. "'[I]n the case of a direct conflict, federal supremacy principles require that state law yield.'" *John Hancock Mut. Life Ins. Co. v. Harris Trust & Sav. Bank*, 510 U.S. 86, 100 (1993) (citation omitted).

As discussed above, ERISA's primary objective is the protection of plan participants and their beneficiaries. *See, e.g.*, *Boggs*, 520 U.S. at 845. "Th[is] general policy is implemented by ERISA's specific provisions." *Id.* Thus, ERISA specifies that beneficiary status is to be determined by reference to the plan participant's beneficiary designation form or the terms of the plan, and requires plan fiduciaries to administer ERISA plans

in accordance with the ERISA plan documents. ERISA also provides that plan fiduciaries must administer plans for the sole benefit of plan participants and their beneficiaries, and grants beneficiaries a federal cause of action to enforce compliance with the terms of the applicable ERISA plans.

These provisions clearly establish Congress's intent that plan administrators determine beneficiary status and distribute plan benefits according to a participant's designation of beneficiary pursuant to the terms of the plan documents. Section 11.07.010—by nullifying ERISA plan beneficiary designations and requiring disbursement of funds to persons other than the designated beneficiary in violation of the terms of ERISA plan documents—directly conflicts with these specific provisions and with ERISA's policy of protecting beneficiaries.

A. Section 11.07.010 Conflicts With Specific ERISA Provisions That Protect Beneficiaries

1. Section 11.07.010 Conflicts With ERISA's Definition Of "Beneficiary"

Section 11.07.010 directly conflicts with ERISA's definition of "beneficiary." In enacting ERISA "to protect ... the interests of ... beneficiaries" in ERISA plans, ERISA § 2(b), 29 U.S.C. § 1001(b), Congress carefully delimited the category of persons who qualify as plan beneficiaries entitled to the protections of ERISA. Section 3(8) of ERISA defines the term "beneficiary" as "a person designated by a participant, or by the terms of an employee benefit plan, who is or may become entitled to a benefit thereunder." 29 U.S.C. § 1002(8). In this case, it is undisputed that Petitioner was the "person designated by [the] participant" within the meaning of § 3(8). It is also undisputed that, under the terms of the applicable ERISA plans, benefits are to be distributed to the person listed on the plan participant's beneficiary designation form on file with the plan administrator. *See* J.A. 35, 36, 39-40. Thus, Petitioner

is the *only* individual who meets ERISA's definition of "beneficiary" and is entitled to receive benefits in this case, because she is the only "person designated by [the] participant" in accordance with "the terms of [the] employee benefit plan[s]." ERISA § 3(8), 29 U.S.C. § 1002(8).

Section 11.07.010 directly conflicts with ERISA's definition of "beneficiary" because it purports to "revoke" the beneficiary status of individuals whom ERISA classifies as beneficiaries. "[C]ompliance with both federal and state law regulations is a physical impossibility" in this context, because federal law treats the designated beneficiary as the "beneficiary" entitled to receive benefits, whereas state law purports to grant that status to others. It is difficult to imagine a more obvious and direct conflict between state and federal law, and accordingly § 11.07.010 is preempted by ERISA.

The court below reasoned that "[b]enefits under the plan remain to be distributed in accord with the plan documents under ERISA" because "[t]he statute operates under the legal fiction that 'the former spouse [did not] survive the decedent, having died at the time of entry of the decree of dissolution ....'" Pet. App. 21a. But that "fiction" does not change the fact that § 11.07.010 purports to override beneficiary designations made by participants in accordance with the terms of ERISA plans. The reasoning of the court below would permit the rights of designated ERISA beneficiaries to be nullified at will by the simple ruse of promulgating a state law that assumes away the existence of any disfavored beneficiaries. That result is plainly impermissible; ERISA's solicitude for the protection of ERISA plan beneficiaries would be wholly illusory if beneficiary rights could be voided in this manner. The "fiction" relied upon by the court below is precisely that—a fiction—and provides no justification for the State's attempt to override ERISA's statutory scheme.

In determining whether a state law is preempted by ERISA, courts look not to "legal fictions," but to the actual "effect of the state law on ERISA plans." *Dillingham*, 519 U.S. at 325 (citation omitted). In this case, the effect of § 11.07.010 is clear—to override the plan participant's designation of beneficiary and to confer beneficiary status on other individuals, in violation of ERISA's definition of beneficiary. ERISA's statutory definition yields a clear result under the terms of the plans at issue here: The beneficiary is the person designated by the plan participant in accordance with the terms of the plan. Because § 11.07.010 purports to mandate a different result, it conflicts with ERISA's definition of beneficiary and is preempted.[14]

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[14] Similarly, § 11.07.010 also conflicts with ERISA's provisions that require plan fiduciaries to discharge their duties in the sole interest of plan participants and beneficiaries. *See* ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1) ("a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries[,] . . . [and] for the exclusive purpose of . . . providing benefits to participants and their beneficiaries; and . . . defraying reasonable expenses of administering the plan . . . ."); ERISA § 403(c)(1), 29 U.S.C. § 1103(c)(1) (plan assets, with limited exceptions, are "held for the exclusive purposes of providing benefits to participants in the plan and their beneficiaries and defraying reasonable expenses of administering the plan."). Because § 11.07.010 purports to require a plan fiduciary to administer an ERISA plan for the benefit of persons other than plan participants and their designated beneficiaries, it directly conflicts with these ERISA requirements. "In the face of [a] direct clash between state law and the provisions and objectives of ERISA, the state law cannot stand." *Boggs*, 520 U.S. at 844.

2. Section 11.07.010 Conflicts With ERISA's Provisions Protecting Beneficiaries' Rights To The Benefits Due Under Plan Documents

Section 11.07.010 also violates various provisions of ERISA that protect the rights of beneficiaries to receive the benefits to which they are entitled under the terms of the applicable plan documents. ERISA expressly requires plan fiduciaries to administer plans in accordance with the plan documents, which must specify the method for determining benefit payment rights and be available for review by plan beneficiaries. ERISA reinforces these provisions by granting plan beneficiaries a federal cause of action to enforce their rights under the terms of the plan. Because § 11.07.010 purports to override a designated beneficiary's rights to receive the benefits to which she is entitled under the terms of the plan, § 11.07.010 clearly conflicts with these ERISA provisions.

ERISA § 404(a)(1)(D) provides that "a fiduciary shall discharge his duties with respect to a plan . . . in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this title." ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D). ERISA specifies that every employee benefit plan "shall be established and maintained pursuant to a written instrument," and that every such plan shall "specify the basis on which payments are made . . . from the plan." ERISA §§ 402(a)(1), (b)(4), 29 U.S.C. §§ 1102(a)(1), (b)(4); *see also* H.R. CONF. REP. No. 93-1280, 93d Cong., 2d Sess. 297 (1974) ("[T]he plan documents are to . . . specify the basis on which payments are to be made to participants and beneficiaries."). Thus, it is clear that Congress intended for ERISA plans to specify in the plan documents the method by which beneficiary rights are to be determined and plan benefits are to be paid. *Id.* Moreover, Congress confirmed its intent to give control-

ling force to these plan documents by requiring plan fiduciaries to follow the plan documents in administering ERISA plans. ERISA § 404(a)(1)(D).

ERISA's fiduciary liability and enforcement provisions reinforce this congressional insistence that ERISA plans must be administered in accordance with the governing plan documents. Sections 502(a)(1)(B) and (a)(3) of ERISA, for example, authorize plan beneficiaries to bring a civil action "to enforce [their] rights under the terms of the plan" and to "enjoin any act or practice which violates . . . the terms of the plan." 29 U.S.C. §§ 1132(a)(1)(B), (a)(3); *see also* ERISA § 409(a), 29 U.S.C. § 1109(a) (imposing liability for breach of fiduciary duty). By establishing a federal cause of action and imposing liability for failure to administer an ERISA plan in accordance with the plan documents, Congress left no doubt about its decision that ERISA plans are to be administered in accordance with the terms of the plan documents.

The congressional purpose behind these requirements is readily apparent—to protect plan participants and their beneficiaries by ensuring that they are aware of, and will receive, the plan benefits to which they are entitled under the terms of ERISA plans. As ERISA's "declaration of policy" provides, it is "the policy of this Act to protect . . . the interests of participants in employee benefit plans and their beneficiaries, by requiring the disclosure and reporting to participants and beneficiaries of financial and other information with respect thereto, by establishing standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans, and by providing for appropriate remedies, sanctions, and ready access to the Federal courts." ERISA § 2(b), 29 U.S.C. § 1001(b).

As part of this protection, Congress required ERISA plans to make plan documents available for review by plan participants and beneficiaries. *See* ERISA § 104(b)(2), 29 U.S.C. § 1024(b)(2) ("The administrator

shall make copies of the latest updated summary plan description . . . or other instruments under which the plan . . . is operated available for examination by any plan participant or beneficiary . . . ."); *id.* § 104(b)(4), 29 U.S.C. § 1024(b)(4) ("The administrator shall, upon written request of any participant or beneficiary, furnish a copy of the . . . instruments under which the plan is . . . operated."); H.R. CONF. REP. NO. 93-1280, 93d Cong., 2d Sess. 259 (1974) ("[T]he . . . plan documents are to be available for examination by participants or beneficiaries at the principal office of the plan administrator and such other places as is necessary to provide reasonable access to these . . . documents."); *see also* ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B) (authorizing an ERISA plan participant or beneficiary to bring an action "to clarify his rights to future benefits under the terms of the plan").

As these provisions make clear, Congress intended that the rights of ERISA plan beneficiaries would be determined by reference to readily accessible ERISA plan documents, not on the basis of varying and potentially inconsistent state laws. Here, the plan documents specify that beneficiary status will be determined and benefits will be paid in accordance with the plan participant's designated beneficiary form on file with the plan administrator. J.A. 35, 36, 39-40. By attempting to nullify the ERISA plan participant's designation of beneficiary and requiring the payment of benefits to someone other than the person designated in accordance with the plan documents, § 11.07.010 directly conflicts with the text and structure of ERISA.[15]

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[15] Numerous court of appeals decisions support this analysis. *See, e.g.*, *Metropolitan Life Ins. Co. v. Pettit*, 164 F.3d 857, 863 (4th Cir. 1998) (holding that ERISA requires a plan fiduciary to pay benefits to the person designated on the

[Footnote continued on next page]

B. Section 11.07.010 Conflicts With ERISA's Purpose To Protect Beneficiaries

Each of the specific ERISA provisions discussed above serves to implement ERISA's core purpose "to protect . . . the interests of participants in employee benefit plans and their beneficiaries." ERISA § 2(b), 29 U.S.C. § 1001(b). Contrary to Congress's express concern for protecting ERISA plan beneficiaries, § 11.07.010—by purporting to override ERISA plan beneficiary designations—prevents designated beneficiaries from receiving payments to which they are entitled under the terms of an ERISA plan. Such a denial of benefits to a designated beneficiary under an ERISA plan clearly interferes with the statute's purpose of protecting participants and their beneficiaries.

Only in "narrow circumstances delineated by its provisions," such as in the cases of a surviving spouse annuity or a QDRO, does ERISA confer beneficiary status on an individual who has not been designated as such by the participant or the terms of the plan. *Boggs*, 520 U.S. at 846 (citing ERISA § 205(a), 29 U.S.C. § 1055(a) and ERISA § 206(d)(3), 29 U.S.C. § 1056 (d)(3)). ERISA's surviving spouse annuity provision,

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beneficiary form, by virtue of the fiduciary's statutory duty to "discharge his duties with respect to a plan . . . in accordance with the documents and instruments governing the plan") (quoting 29 U.S.C. § 1104(a)); *Metropolitan Life Ins. Co. v. Pressley*, 82 F.3d 126, 130 (6th Cir. 1996) (holding that, because "ERISA requires that a plan administrator discharge his duties 'in accordance with the documents and instruments governing the plan,'" the designation of beneficiary under the plan must control) (citation omitted); *Metropolitan Life Ins. Co. v. Marsh*, 119 F.3d 415, 420 (6th Cir. 1997) (same); *McMillan v. Parrott*, 913 F.2d 310, 311 (6th Cir. 1990) (same).

§ 205(a), requires the provision of an annuity to a surviving spouse in some circumstances and thereby establishes the spouse as a beneficiary to this extent. *Id.* Section 206(d)(3)(J) similarly establishes that an alternate payee designated in a QDRO "shall be considered . . . a beneficiary under the plan." ERISA § 206(d)(3)(J), 29 U.S.C. § 1056(d)(3)(J). As the *Boggs* Court explained, Congress's enactment of these narrow provisions protecting specific interests of spouses and children indicates that other claims are "not consistent with the statutory scheme." *Boggs*, 520 U.S. at 847. The *Boggs* Court held that Congress intended to preempt the "nonbeneficiary, nonparticipant interests" of the claimants in that case, because they were neither participants nor beneficiaries, and their claims were not based "on a designation by [the plan participant] or under the terms of the retirement plans." *Id.* at 848, 851.

In this case, Respondents do not qualify as participants or beneficiaries entitled to receive benefits under the terms of the ERISA plans at issue here. Rather, their claim to plan benefits is solely dependent on the operation of state law purporting to oust the designated beneficiary. As the *Boggs* Court's analysis makes clear, a state law attempting to nullify the rights of a designated plan *beneficiary* in favor of a *nonbeneficiary, nonparticipant* is contrary to the purposes of ERISA and is therefore preempted. *Id.* at 850-51.

Simply put, if permitted to withstand ERISA preemption, § 11.07.010 would undermine ERISA's goal of protecting plan participants and their beneficiaries. But "[s]tates are not free to change ERISA's structure and balance." *Id.* at 844. Thus, because § 11.07.010 "conflicts with the provisions of ERISA [and] operates to

frustrate its objectives," federal preemption is required. *Id.* at 841.[16]

C. Section 11.07.010 Conflicts With ERISA's Anti-Alienation Provision

With regard to the pension plan at issue here, § 11.07.010 is preempted for an additional reason: It conflicts with ERISA's prohibition against alienation of retirement benefits. ERISA's anti-alienation provision, ERISA § 206(d)(1), 29 U.S.C. § 1056(d)(1), is a "spendthrift" clause that (subject only to enumerated exceptions not applicable here) unqualifiedly dictates that "[e]ach pension plan shall provide that benefits provided under the plan may not be assigned or alienated." ERISA § 206(d)(1), 29 U.S.C. § 1056(d)(1). This provision is designed to protect pension plan participants and their beneficiaries from the diversion of "undistributed pension benefits, which are intended to provide a stream of income to participants and their beneficiaries." *Boggs*, 520 U.S. at 852. By preventing transfers of pension rights, the anti-alienation provision ensures that these proceeds will remain available to sustain participants and their beneficiaries during the later years of life for which they are intended. *See id.* at 851-52; *id.* at 851

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[16] As demonstrated above, § 11.07.010 similarly interferes with ERISA's other core purposes. By mandating ERISA plan administration and binding plan fiduciaries to a particular choice, § 11.07.010 frustrates ERISA's core function of determining beneficiary status and dispensing plan benefits. *See supra*, at 12-15. In addition, the Washington state statute—by purporting to override an ERISA plan beneficiary designation—likewise frustrates Congress's goal of ensuring the nationally uniform and cost effective administration of ERISA plans. *See supra*, at 17-21. Thus, whether analyzed under ERISA's express preemption provision or under traditional conflict preemption principles, § 11.07.010 cannot withstand scrutiny.

("Statutory anti-alienation provisions are potent mechanisms to prevent the dissipation of funds.").

Recognizing the strength of Congress's anti-alienation mandate, this Court has consistently upheld ERISA's anti-alienation provision against intrusions from state laws that would otherwise reflect traditional exercises of general police power. *See, e.g.*, *id.* at 851-53 (anti-alienation provision preempts testamentary transfer, under state law, of pension plan benefits by the spouse of a plan participant who dies prior to the participant's retirement); *Guidry v. Sheet Metal Workers Nat'l Pension Fund*, 493 U.S. 365, 371-72 (1990) (anti-alienation provision bars use of an equitable constructive trust to seize pension plan benefits for repayment of amounts embezzled by a former union official); *Patterson v. Shumate*, 504 U.S. 753, 760 (1992) (anti-alienation provision is entitled to enforcement under Bankruptcy Code, and is not limited by state "spendthrift trust" law, thereby precluding individual pension plan interests from becoming assets of the bankruptcy estate subject to the claims of creditors). The policy of ERISA's anti-alienation clause has remained steadfast, in the Court's words, even when there have been "strong equitable considerations to the contrary." *Patterson*, 504 U.S. at 765 (citing *Guidry*, 493 U.S. at 376).

The same result is required here. As in *Boggs*, which presented a similar conflict between ERISA's anti-alienation clause and state domestic relations law, *see* 520 U.S. at 836-37, 51, § 11.07.010 is preempted "if [it] conflicts with the provisions of ERISA or operates to frustrate its objects." *Boggs*, 520 U.S. at 841. Both factors are present with respect to § 11.07.010, which violates both the text and purposes of the anti-alienation provision.

The text of the anti-alienation provision makes clear that pension plan benefits "may not be assigned or alienated." ERISA § 206(d)(1), 29 U.S.C. § 1056(d)(1). On its face, this statutory language precludes the use of state

domestic relations law to transfer pension benefit rights from one individual to another. Moreover, as this Court explained in *Boggs*, ERISA's prohibition against alienation "is mandatory and contains only two explicit exceptions," *see* ERISA § 206(d)(2), 29 U.S.C. § 1056(d)(2) (dealing with plan loans), ERISA § 206(d)(3)(A), 29 U.S.C. § 1056(d)(3)(A) (involving QDROs), "which are not subject to judicial expansion." *Boggs*, 520 U.S. at 851. Unless an attempted transfer of pension benefits occurs through a plan loan or a QDRO, therefore, ERISA's anti-alienation provision expressly prohibits the transfer. *Boggs*, 520 U.S. at 851-52.

Section 11.07.010, by purporting to transfer pension plan benefits from the designated beneficiary to other persons without the use of a plan loan or QDRO, attempts to achieve the "assignment or alienation" of pension plan benefits and thus falls squarely within the prohibition of the anti-alienation provision. An "assignment or alienation" is defined, with certain exceptions not applicable here, as "'[a]ny direct or indirect arrangement whereby a party acquires from a participant or beneficiary' an interest enforceable against a plan to 'all or any part of a plan benefit payment, which is, or may become, payable to the participant or beneficiary.'" *Boggs*, 520 U.S. at 851 (quoting 26 C.F.R. § 1.401(a)-13(c)(1)(ii)). These requirements plainly are satisfied here; § 11.07.010 purports to be enforceable against ERISA plans and would require plan benefits to be paid to someone other than the plan participant's designated beneficiary. Because § 11.07.010 thus purports to "assign or alienate" pension plan benefits, it is incompatible with ERISA's anti-alienation provision.[17]

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[17] *See also Pettit*, 164 F.3d at 864 (ERISA "specifies how . . . an alienation or assignment should be accomplished in the domestic relations context—through a QDRO" and there-

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Indeed, plans may not give effect to attempted alienations not authorized by an express ERISA exception, whether purportedly imposed by state law or by some "generalized equitable exception." *Guidry*, 493 U.S. at 376; *see also Patterson*, 504 U.S. at 760 ("[T]his Court itself vigorously has enforced ERISA's prohibition on the assignment or alienation of pension benefits, declining to recognize any implied exceptions to the broad statutory bar."). In circumstances not governed by the plan loan or QDRO exceptions, the issue of beneficiary status is always to be determined under ERISA and not state law. *See Boggs*, 520 U.S. at 851-52.

ERISA is clear about the rules that govern beneficiary determinations for divorced spouses. Indeed, in the context of retirement plans providing annuity benefits, regulations issued by the Internal Revenue Service under ERISA's parallel Internal Revenue Code provisions expressly confirm the sanctity of beneficiary designations not altered by QDROs:

> If a participant divorces his spouse prior to the annuity starting date, any elections made while the participant was married to his former spouse remain valid, unless otherwise provided in a QDRO, or unless the participant changes them or is remarried.

26 C.F.R. § 1.401(a)-20, A-25(b)(3) (2000).[18] Although express regulatory interpretations are not available for

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fore preempts non-QDRO state law attempts to override beneficiary designations); *Mattei*, 126 F.3d at 809 ("Where there is no QDRO . . . awards of property pursuant to [state law] must fall before conflicting designations of ERISA beneficiaries.").

[18] The "elections" referenced in this passage are those in which the participant, with spousal consent, determines

[Footnote continued on next page]

plans providing retirement benefits in a form other than an annuity, ERISA does not distinguish between annuity and non-annuity plans with respect to the method for making or recognizing beneficiary designations.[19]

Because application of § 11.07.010 would require pension plan administrators to alienate pension benefits from designated beneficiaries in the absence of a plan loan or QDRO, § 11.07.010 conflicts with ERISA's anti-alienation provision. Quite simply, it would be impossible for the plan administrator in this case to comply with both ERISA and § 11.07.010, and the Washington statute is therefore preempted. *Boggs*, 520 U.S. at 844 (preemption is required "'where compliance with both federal and state regulations is a physical impossibility'") (citation omitted).

Section 11.07.010 also conflicts with Congress's intent to provide "rational rules for plan administrators" in this field, in the form of federal "guidelines for determining whether the exception to the [anti-alienation] rules applies." S. Rep. No. 575, 98th Cong., 2d Sess. 19 (1984), *reprinted in* 1984 U.S.C.C.A.N. 2547, 2565. When Congress "clarified" the law to "creat[e] a limited [QDRO] exception that permits benefits under a pension, etc., plan to be divided under certain circumstances," *id.*, it sought to "balance the needs of the former spouse for flexibility to provide appropriate support

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whether and in what form the spouse or other designated beneficiary may receive annuity benefits. *See* ERISA § 205(c), 29 U.S.C. § 1055(c).

[19] The same regulation also specifies that former spouses are entitled to qualified joint and survivor annuity status "even if the participant and spouse are not married on the date of the participant's death, except as provided in a QDRO." 26 C.F.R. § 1.401(a)-20, A-25(b)(3) (2000).

[with] the plans' needs for clear rules." 130 CONG. REC. 13325 (1984) (statement of Rep. Rostenkowski). It therefore required plans to give effect to state domestic relations orders "*if and only if*" the statutory QDRO conditions are met. S. REP. NO. 575, *supra*, at 19, *reprinted in* 1984 U.S.C.C.A.N. 2565 (emphasis added); *see also* H.R. REP. NO. 655, Part I, 98th Cong., 2d Sess. 39 (1984) (in order to "minimize the burden on the plan," ERISA "makes clear that the orders have to meet specific requirements if they are to be honored by the plan").

When, as in this case, a state domestic relations order does not comply with the statutory QDRO requirements designed to assure clarity and ease of application, *see* ERISA § 206(d)(3)(C)-(D), 29 U.S.C. § 1056(d)(3)(C)-(D), ERISA requires that the plan be administered and benefits be paid without regard to the non-compliant order. The State of Washington cannot circumvent this statutory scheme by insisting on adherence to a legal mandate concerning non-QDRO dispositions of plan benefits upon divorce that conflicts with ERISA's anti-alienation provision. Thus, § 11.07.010 is preempted because it "conflicts with the provisions of ERISA [and] operates to frustrate its objects." *Boggs*, 520 U.S. at 841.

CONCLUSION

Section 11.07.010 is preempted by ERISA because it "relates to" and has a "connection with" an ERISA plan, and because it directly conflicts with ERISA's text, structure, and purposes. For all of the foregoing reasons, the decision of the Supreme Court of Washington should be reversed, and Petitioner's entitlement to the plan benefits at issue in this case should be confirmed.

Respectfully submitted.

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APPENDIX

STATUTORY APPENDIX

TITLE 29—LABOR

CHAPTER 18—EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
SUBCHAPTER I—PROTECTION OF EMPLOYEE BENEFIT RIGHTS
SUBTITLE A—GENERAL PROVISIONS

* * * * *

§ 1001. Congressional findings and declaration of policy

* * * * *

(b) Protection of interstate commerce and beneficiaries by requiring disclosure and reporting, setting standards of conduct, etc., for fiduciaries

It is hereby declared to be the policy of this chapter to protect interstate commerce and the interests of participants in employee benefit plans and their beneficiaries, by requiring the disclosure and reporting to participants and beneficiaries of financial and other information with respect thereto, by establishing standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans, and by providing for appropriate remedies, sanctions, and ready access to the Federal courts.

(c) Protection of interstate commerce, the Federal taxing power, and beneficiaries by vesting of accrued benefits, setting minimum standards of funding, requiring termination insurance

It is hereby further declared to be the policy of this chapter to protect interstate commerce, the Federal taxing power, and the interests of participants in private

pension plans and their beneficiaries by improving the equitable character and the soundness of such plans by requiring them to vest the accrued benefits of employees with significant periods of service, to meet minimum standards of funding, and by requiring plan termination insurance.

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§ 1002. Definitions

For purposes of this subchapter:

* * * * *

(7) The term "participant" means any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employer or members of such organization, or whose beneficiaries may be eligible to receive any such benefit.

(8) The term "beneficiary" means a person designated by a participant, or by the terms of an employee benefit plan, who is or may become entitled to a benefit thereunder.

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SUBTITLE B—REGULATORY PROVISIONS
Part 1—Reporting and Disclosure

* * * * *

§ 1024. Filing and furnishing of information

* * * * *

(b) Publication of summary plan description and annual report to participants and beneficiaries of plan

Publication of the summary plan descriptions and annual reports shall be made to participants and beneficiaries of the particular plan as follows:

* * * * *

(2) The administrator shall make copies of the latest updated summary plan description and the latest annual report and the bargaining agreement, trust agreement, contract, or other instruments under which the plan was established or is operated available for examination by any plan participant or beneficiary in the principal office of the administrator and in such other places as may be necessary to make available all pertinent information to all participants (including such places as the Secretary may prescribe by regulations).

* * * * *

(4) The administrator shall, upon written request of any participant or beneficiary, furnish a copy of the latest updated summary plan description,[,] and the latest annual report, any terminal report, the bargaining agreement, trust agreement, contract, or other instruments under which the plan is established or operated. The administrator may make a reasonable charge to cover the cost of furnishing such complete copies. The Secretary may by regulation pre-

scribe the maximum amount which will constitute a reasonable charge under the preceding sentence.

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SUBTITLE B—REGULATORY PROVISIONS
Part 2—Participation and Vesting

* * * * *

§ 1055. Requirement of joint and survivor annuity and preretirement survivor annuity

(a) Required contents for applicable plans

Each pension plan to which this section applies shall provide that—

(1) in the case of a vested participant who does not die before the annuity starting date, the accrued benefit payable to such participant shall be provided in the form of a qualified joint and survivor annuity, and

(2) in the case of a vested participant who dies before the annuity starting date and who has a surviving spouse, a qualified preretirement survivor annuity shall be provided to the surviving spouse of such participant.

* * * * *

§ 1056. Form and payment of benefits

* * * * *

(d) Assignment or alienation of plan benefits

(1) Each pension plan shall provide that benefits provided under the plan may not be assigned or alienated.

(2) For the purposes of paragraph (1) of this subsection, there shall not be taken into account any voluntary and revocable assignment of not to exceed 10 percent of any benefit payment, or of any irrevocable assignment or alienation of benefits executed before September 2,

1974. The preceding sentence shall not apply to any assignment or alienation made for the purposes of defraying plan administration costs. For purposes of this paragraph a loan made to a participant or beneficiary shall not be treated as an assignment or alienation if such loan is secured by the participant's accrued nonforfeitable benefit and is exempt from the tax imposed by section 4975 of Title 26 (relating to tax on prohibited transactions) by reason of section 4975(d)(1) of Title 26.

(3)(A) Paragraph (1) shall apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a participant pursuant to a domestic relations order, except that paragraph (1) shall not apply if the order is determined to be a qualified domestic relations order. Each pension plan shall provide for the payment of benefits in accordance with the applicable requirements of any qualified domestic relations order.

(B) For purposes of this paragraph—

(i) the term "qualified domestic relations order" means a domestic relations order—

(I) which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan, and

(II) with respect to which the requirements of subparagraphs (C) and (D) are met, and

(ii) the term "domestic relations order" means any judgment, decree, or order (including approval of a property settlement agreement) which—

(I) relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant, and

(II) is made pursuant to a State domestic relations law (including a community property law).

(C) A domestic relations order meets the requirements of this subparagraph only if such order clearly specifies—

(i) the name and the last known mailing address (if any) of the participant and the name and mailing address of each alternate payee covered by the order,

(ii) the amount or percentage of the participant's benefits to be paid by the plan to each such alternate payee, or the manner in which such amount or percentage is to be determined,

(iii) the number of payments or period to which such order applies, and

(iv) each plan to which such order applies.

(D) A domestic relations order meets the requirements of this subparagraph only if such order—

(i) does not require a plan to provide any type or form of benefit, or any option, not otherwise provided under the plan,

(ii) does not require the plan to provide increased benefits (determined on the basis of actuarial value), and

(iii) does not require the payment of benefits to an alternate payee which are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order.

* * * * *

(G)(i) In the case of any domestic relations order received by a plan—

(I) the plan administrator shall promptly notify the participant and each alternate payee of the receipt of such order and the plan's procedures for determining the qualified status of domestic relations orders, and

(II) within a reasonable period after receipt of such order, the plan administrator shall determine whether such order is a qualified domestic relations order and notify the participant and each alternate payee of such determination.

(ii) Each plan shall establish reasonable procedures to determine the qualified status of domestic relations orders and to administer distributions under such qualified orders. Such procedures—

(I) shall be in writing,

(II) shall provide for the notification of each person specified in a domestic relations order as entitled to payment of benefits under the plan (at the address included in the domestic relations order) of such procedures

promptly upon receipt by the plan of the domestic relations order, and

(III) shall permit an alternate payee to designate a representative for receipt of copies of notices that are sent to the alternate payee with respect to a domestic relations order.

* * * * *

(H)

(i) During any period in which the issue of whether a domestic relations order is a qualified domestic relations order is being determined (by the plan administrator, by a court of competent jurisdiction, or otherwise), the plan administrator shall separately account for the amounts (hereinafter in this subparagraph referred to as the "segregated amounts") which would have been payable to the alternate payee during such period if the order had been determined to be a qualified domestic relations order.

(ii) If within the 18-month period described in clause (v) the order (or modification thereof) is determined to be a qualified domestic relations order, the plan administrator shall pay the segregated amounts (including any interest thereon) to the person or persons entitled thereto.

(iii) If within the 18-month period described in clause (v) -

(I) it is determined that the order is not a qualified domestic relations order, or

(II) the issue as to whether such order is a qualified domestic relations order is not resolved, then the plan administrator shall pay the segregated amounts (including any interest thereon) to the person or persons who would have been entitled to such amounts if there had been no order.

(iv) Any determination that an order is a qualified domestic relations order which is made after the close of the 18-month period described in clause (v) shall be applied prospectively only.

(v) For purposes of this subparagraph, the 18-month period described in this clause is the 18-month period beginning with the date on which the first payment would be required to be made under the domestic relations order.

(I) If a plan fiduciary acts in accordance with part 4 of this subtitle in—

(i) treating a domestic relations order as being (or not being) a qualified domestic relations order, or

(ii) taking action under subparagraph (H),

then the plan's obligation to the participant and each alternate payee shall be discharged to the extent of any payment made pursuant to such Act.

(J) A person who is an alternate payee under a qualified domestic relations order shall be considered for purposes of any provision of this chapter a beneficiary under the plan.

* * * * *

(K) The term "alternate payee" means any spouse, former spouse, child, or other dependent of a participant who is recognized by a domestic relations order as having a right to receive all, or a portion of, the benefits payable under a plan with respect to such participant.

* * * * *

Part 4—Fiduciary Responsibility

* * * * *

§ 1102. Establishment of plan

(a) Named fiduciaries

(1) Every employee benefit plan shall be established and maintained pursuant to a written instrument.

* * * * *

(b) Requisite features of plan

Every employee benefit plan shall—

* * * * *

(4) specify the basis on which payments are made to and from the plan.

* * * * *

§ 1103. Establishment of trust

* * * * *

(c) Assets of plan not to inure to benefit of employer; allowable purposes of holding plan assets

(1) Except as provided in paragraph (2), (3), or (4) or subsection (d) of this section, or under sections 1342 and 1344 of this title (relating to termination of insured plans), or under section 420 of Title 26 (as in effect on January 1, 1995), the assets of a plan shall never inure to the benefit of any employer and shall be held for the exclusive purposes of providing benefits to participants in the plan and their beneficiaries and defraying reasonable expenses of administering the plan.

* * * * *

§ 1104. Fiduciary duties

(a) Prudent man standard of care

(1) Subject to sections 1103(c) and (d), 1342, and 1344 of this title, a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and—

(A) for the exclusive purpose of:

(i) providing benefits to participants and their beneficiaries; and

(ii) defraying reasonable expenses of administering the plan;

* * * * *

and

(D) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this subchapter and subchapter III of this chapter.

* * * * *

§ 1109. Liability for breach of fiduciary duty

(a) Any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this subchapter shall be personally liable to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such

other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary.

* * * * *

Part 5—Administration and Enforcement

* * * * *

§ 1132. Civil enforcement

(a) Persons empowered to bring a civil action

A civil action may be brought—

(1) by a participant or beneficiary—

* * * * *

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;

(2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 1109 of this title;

(3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan;

* * * * *

§ 1144. Other laws

(a) Supersedure; effective date

Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee

benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title.

* * * * *

(b) Construction and application

* * * * *

(7) Subsection (a) of this section shall not apply to qualified domestic relations orders (within the meaning of section 1056(d)(3)(B)(i) of this title)

* * * * *

ILLINOIS COMPILED STATUTES ANNOTATED

CHAPTER 760—TRUSTS AND FIDUCIARIES
TRUSTS AND DISSOLUTIONS
OF MARRIAGE ACT

* * * * *

§ 35/1. [Effect on former spouse]

Sec. 1. (a) Unless the governing instrument or the judgment of judicial termination of marriage expressly provides otherwise, judicial termination of the marriage of the settlor of a trust revokes every provision which is revocable by the settlor pertaining to the settlor's former spouse in a trust instrument or amendment thereto executed by the settlor before the entry of the judgment of judicial termination of the settlor's marriage, and any such trust shall be administered and construed as if the settlor's former spouse had died upon entry of the judgment of judicial termination of the settlor's marriage.

* * * * *

REVISED STATUTES OF THE STATE OF MISSOURI

TITLE 31—TRUSTS AND ESTATES OF DECEDENTS AND PERSONS UNDER DISABILITY
CHAPTER 461—NONPROBATE TRANSFERS LAW

* * * * *

§ 461.051. Marriage dissolution or annulment--revocation of transfer to former spouse or relative of spouse, exception--remarriage to spouse, nullification of annulment, effect, relative of the owner's spouse, defined

1. If, after an owner makes a beneficiary designation, the owner's marriage is dissolved or annulled, any provision of the beneficiary designation in favor of the owner's former spouse or a relative of the owner's former spouse is revoked on the date the marriage is dissolved or annulled, whether or not the beneficiary designation refers to marital status. The beneficiary designation shall be given effect as if the former spouse or relative of the former spouse had disclaimed the revoked provision.

2. Subsection 1 of this section does not apply to a provision of a beneficiary designation that has been made irrevocable, or revocable only with the spouse's consent, or that is made after the marriage was dissolved, or that expressly states that marriage dissolution shall not affect the designation of a spouse or relative of a spouse as beneficiary.

3. Any provision of a beneficiary designation revoked solely by this section is revived by the owner's remarriage to the former spouse or by a nullification of the marriage dissolution or annulment.

4. In this section, "a relative of the owner's former spouse" means an individual who is related to the owner's former spouse by blood, adoption or affinity and who, after the divorce or annulment, is not related to the owner by blood, adoption or affinity.

* * * * *

MONTANA CODE ANNOTATED

TITLE 72—ESTATES, TRUSTS, AND FIDUCIARY RELATIONSHIPS
CHAPTER 2—UPC – INTESTACY, WILLS, AND DONATIVE TRANSFERS
PART 8—GENERAL PROVISIONS CONCERNING PROBATE AND NONPROBATE TRANSFERS

* * * * *

72-2-814 Revocation of probate and nonprobate transfers by divorce -- no revocation by other changes of circumstances.

* * * * *

(2) Except as to a retirement system established in Title 19 or as provided by the express terms of a governing instrument, a court order, or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce, or annulment, the divorce or annulment of a marriage:

(a) revokes any revocable:

(i) disposition or appointment of property made by a divorced individual to the individual's former spouse in a governing instrument and any disposition or appointment created by

law or in a governing instrument to a relative of the divorced individual's former spouse;

(ii) provision in a governing instrument conferring a general or nongeneral power of appointment on the divorced individual's former spouse or on a relative of the divorced individual's former spouse; and

(iii) nomination in a governing instrument that nominates a divorced individual's former spouse or a relative of the divorced individual's former spouse to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, conservator, agent, or guardian

* * * * *

(4) Provisions of a governing instrument are given effect as if the former spouse and relatives of the former spouse disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the former spouse and relatives of the former spouse died immediately before the divorce or annulment.

(5) Provisions revoked solely by this section are revived by the divorced individual's remarriage to the former spouse or by a nullification of the divorce or annulment.

* * * * *

PAGE'S OHIO REVISED CODE ANNOTATED

TITLE XIII—COMMERCIAL TRANSACTIONS – OHIO UNIFORM COMMERCIAL CODE
CHAPTER 1339—FIDUCIARY LAW

* * * * *

§ 1339.63 Termination of marriage revokes designation of spouse as beneficiary of death benefits; immunity.

* * * * *

(B)(1) Unless the designation of beneficiary or the judgment or decree granting the divorce, dissolution of marriage, or annulment specifically provides otherwise, and subject to division (B)(2) of this section, if a spouse designates the other spouse as a beneficiary or if another person having the right to designate a beneficiary on behalf of the spouse designates the other spouse as a beneficiary, and if, after either type of designation, the spouse who made the designation or on whose behalf the designation was made, is divorced from the other spouse, obtains a dissolution of marriage, or has the marriage to the other spouse annulled, then the other spouse shall be deemed to have predeceased the spouse who made the designation or on whose behalf the designation was made, and the designation of the other spouse as a beneficiary is revoked as a result of the divorce, dissolution of marriage, or annulment.

(2) If the spouse who made the designation or on whose behalf the designation was made remarries the other spouse, then, unless the designation no longer can be made, the other spouse shall not be deemed to have predeceased the spouse who made the designation or on whose behalf the designation was made, and the designation of the other spouse as a beneficiary is not revoked because of the previous divorce, dissolution of marriage, or annulment.

* * * * *

OKLAHOMA STATUTES

TITLE 15—CONTRACTS
CHAPTER 3—INTERPRETATION OF CONTRACTS

* * * * *

§ 178. Contracts designating former spouse as beneficiary or providing death benefits--Effect of divorce or annulment

A. If, after entering into a written contract in which a beneficiary is designated or provision is made for the payment of any death benefit (including life insurance contracts, annuities, retirement arrangements, compensation agreements, depository agreements, security registrations, and other contracts designating a beneficiary of any right, property, or money in the form of a death benefit), the party to the contract with the power to designate the beneficiary or to make provision for payment of any death benefit dies after being divorced from the person designated as the beneficiary or named to receive such death benefit, all provisions in the contract in favor of the decedent's former spouse are thereby revoked. Annulment of the marriage shall have the same effect as a divorce. In the event of either divorce or annulment, the decedent's former spouse shall be treated for all purposes under the contract as having predeceased the decedent.

B. Subsection A of this section shall not apply:

1. If the decree of divorce or annulment is vacated;

2. If the decedent had remarried the former spouse and was married to said spouse at the time of the decedent's death;

3. If the decree of divorce or annulment contains a provision expressing an intention contrary to subsection A of this section;

4. If the decedent makes the contract subsequent to the divorce or annulment;

5. To the extent, if any, the contract contains a provision expressing an intention contrary to subsection A of this section; or

6. If the decedent renames the former spouse as the beneficiary or as the person or persons to whom payment of a death benefit is to be made in a writing delivered to the payor of the benefit prior to the death of the decedent and subsequent to the divorce or annulment.

* * * * *

CODE OF VIRGINIA

TITLE 20—DOMESTIC RELATIONS
CHAPTER 6—DIVORCE, AFFIRMATION AND ANNULMENT

* * * * *

§ 20-111.1. Revocation of death benefits by divorce or annulment

Upon the entry of a decree of annulment or divorce from the bond of matrimony on and after July 1, 1993, any revocable beneficiary designation contained in a then existing written contract owned by one party that provides for the payment of any death benefit to the other party is revoked. A death benefit prevented from passing to a former spouse by this section shall be paid as if the former spouse had predeceased the decedent. The payor of any death benefit shall be discharged from all liability upon payment in accordance with the terms of the contract providing for the death benefit, unless the

payor receives written notice of a revocation under this section prior to payment.

The term *"death benefit"* includes any payments under a life insurance contract, annuity, retirement arrangement, compensation agreement or other contract designating a beneficiary of any right, property or money in the form of a death benefit.

This section shall not apply (i) to the extent a decree of annulment or divorce from the bond of matrimony, or a written agreement of the parties provides for a contrary result as to specific death benefits, or (ii) to any trust or any death benefit payable to or under any trust.

* * * * *

ANNOTATED REVISED CODE OF WASHINGTON

TITLE 11—PROBATE AND TRUST LAW
CHAPTER 11.07—NONPROBATE ASSETS ON DISSOLUTION OR INVALIDATION OF MARRIAGE

* * * * *

§ 11.07.010. Nonprobate assets on dissolution or invalidation of marriage

(1) This section applies to all nonprobate assets, wherever situated, held at the time of entry by a superior court of this state of a decree of dissolution of marriage or a declaration of invalidity.

(2)(a) If a marriage is dissolved or invalidated, a provision made prior to that event that relates to the payment or transfer at death of the decedent's interest in a nonprobate asset in favor of or granting an interest or power to the decedent's former spouse is revoked. A provision affected by this section must be interpreted, and the nonprobate asset affected passes, as if the former

spouse failed to survive the decedent, having died at the time of entry of the decree of dissolution or declaration of invalidity.

(b) This subsection does not apply if and to the extent that:

(i) The instrument governing disposition of the nonprobate asset expressly provides otherwise;

(ii) The decree of dissolution or declaration of invalidity requires that the decedent maintain a nonprobate asset for the benefit of a former spouse or children of the marriage, payable on the decedent's death either outright or in trust, and other nonprobate assets of the decedent fulfilling such a requirement for the benefit of the former spouse or children of the marriage do not exist at the decedent's death; or

(iii) If not for this subsection, the decedent could not have effected the revocation by unilateral action because of the terms of the decree or declaration, or for any other reason, immediately after the entry of the decree of dissolution or declaration of invalidity.

(3)(a) A payor or other third party in possession or control of a nonprobate asset at the time of the decedent's death is not liable for making a payment or transferring an interest in a nonprobate asset to a decedent's former spouse whose interest in the nonprobate asset is revoked under this section, or for taking another action in reliance on the validity of the instrument governing disposition of the nonprobate asset, before the payor or other third party has actual knowledge of the dissolution or other invalidation of marriage. A payor or other third party is liable for a payment or transfer made or other action taken after the payor or other third party has actual knowledge of a revocation under this section.

(b) This section does not require a payor or other third party to pay or transfer a nonprobate asset to a beneficiary designated in a governing instrument af-

fected by the dissolution or other invalidation of marriage, or to another person claiming an interest in the nonprobate asset, if the payor or third party has actual knowledge of the existence of a dispute between the former spouse and the beneficiaries or other persons concerning rights of ownership of the nonprobate asset as a result of the application of this section among the former spouse and the beneficiaries or among other persons, or if the payor or third party is otherwise uncertain as to who is entitled to the nonprobate asset under this section. In such a case, the payor or third party may, without liability, notify in writing all beneficiaries or other persons claiming an interest in the nonprobate asset of either the existence of the dispute or its uncertainty as to who is entitled to payment or transfer of the nonprobate asset. The payor or third party may also, without liability, refuse to pay or transfer a nonprobate asset in such a circumstance to a beneficiary or other person claiming an interest until the time that either:

(i) All beneficiaries and other interested persons claiming an interest have consented in writing to the payment or transfer; or

(ii) The payment or transfer is authorized or directed by a court of proper jurisdiction.

(c) Notwithstanding subsections (1) and (2) of this section and (a) and (b) of this subsection, a payor or other third party having actual knowledge of the existence of a dispute between beneficiaries or other persons concerning rights to a nonprobate asset as a result of the application of this section may condition the payment or transfer of the nonprobate asset on execution, in a form and with security acceptable to the payor or other third party, of a bond in an amount that is double the fair market value of the nonprobate asset at the time of the decedent's death or the amount of an adverse claim, whichever is the lesser, or of a similar instrument to provide security to the payor or other third party, indemnifying the payor or other third party for any liability, loss, damage, costs, and expenses for and on account of payment or transfer of the nonprobate asset.

(d) As used in this subsection, "actual knowledge" means, for a payor or other third party in possession or control of the nonprobate asset at or following the decedent's death, written notice to the payor or other third party, or to an officer of a payor or third party in the course of his or her employment, received after the decedent's death and within a time that is sufficient to afford the payor or third party a reasonable opportunity to act upon the knowledge. The notice must identify the nonprobate asset with reasonable specificity. The notice also must be sufficient to inform the payor or other third party of the revocation of the provisions in favor of the decedent's spouse by reason of the dissolution or invalidation of marriage, or to inform the payor or third party of a dispute concerning rights to a nonprobate asset as a result of the application of this section. Receipt of the notice for a period of more than thirty days is presumed to be received within a time that is sufficient to afford the payor or third party a reasonable opportunity to act upon the knowledge, but receipt of the notice for a period of less than five business days is presumed not to be a sufficient time for these purposes. These presumptions may be rebutted only by clear and convincing evidence to the contrary.

(4)(a) A person who purchases a nonprobate asset from a former spouse or other person, for value and without actual knowledge, or who receives from a former spouse or other person payment or transfer of a nonprobate asset without actual knowledge and in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, property, or benefit nor is liable under this section for the amount of the payment or the value of the nonprobate asset. However, a former spouse or other person who, with actual knowledge, not for value, or not in satisfaction of a legally enforceable obligation, receives

payment or transfer of a nonprobate asset to which that person is not entitled under this section is obligated to return the payment or nonprobate asset, or is personally liable for the amount of the payment or value of the nonprobate asset, to the person who is entitled to it under this section.

(b) As used in this subsection, "actual knowledge" means, for a person described in (a) of this subsection who purchases or receives a nonprobate asset from a former spouse or other person, personal knowledge or possession of documents relating to the revocation upon dissolution or invalidation of marriage of provisions relating to the payment or transfer at the decedent's death of the nonprobate asset, received within a time after the decedent's death and before the purchase or receipt that is sufficient to afford the person purchasing or receiving the nonprobate asset reasonable opportunity to act upon the knowledge. Receipt of the personal knowledge or possession of the documents for a period of more than thirty days is presumed to be received within a time that is sufficient to afford the payor or third party a reasonable opportunity to act upon the knowledge, but receipt of the notice for a period of less than five business days is presumed not to be a sufficient time for these purposes. These presumptions may be rebutted only by clear and convincing evidence to the contrary.

(5) As used in this section, "nonprobate asset" means those rights and interests of a person having beneficial ownership of an asset that pass on the person's death under only the following written instruments or arrangements other than the decedent's will:

(a) A payable-on-death provision of a life insurance policy, employee benefit plan, annuity or similar contract, or individual retirement account;

(b) A payable-on-death, trust, or joint with right of survivorship bank account;

(c) A trust of which the person is a grantor and that becomes effective or irrevocable only upon the person's death; or

(d) Transfer on death beneficiary designations of a transfer on death or pay on death security, if such designations are authorized under Washington law.

For the general definition in this title of "nonprobate asset," see RCW 11.02.005(15) and for the definition of "nonprobate asset" relating to testamentary disposition of nonprobate assets, see RCW 11.11.010(7).

(6) This section is remedial in nature and applies as of July 25, 1993, to decrees of dissolution and declarations of invalidity entered after July 24, 1993, and this section applies as of January 1, 1995, to decrees of dissolution and declarations of invalidity entered before July 25, 1993.

(14)

Supreme Court, U.S.
FILED
SEP 19 2000
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No. 99-1529

IN THE

Supreme Court of the United States

DONNA RAE EGELHOFF,

Petitioner,

v.

SAMANTHA EGELHOFF, A Minor, By and Through Her Natural Parent Kate Breiner, and DAVID EGELHOFF,

Respondents.

On Writ of Certiorari to the Supreme Court of Washington

BRIEF FOR RESPONDENTS

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QUESTION PRESENTED

Whether the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §§ 1001 *et seq.*, preempts a Washington state domestic relations law regarding the consequences of divorce on the disposition of nonprobate assets, RCW 11.07.010(3)(a), notwithstanding that such law merely establishes a default rule regarding interpretation of spousal beneficiary designations that can be avoided with no adverse consequence, provides a claim only against the divorced spouse and not any ERISA plan, can and will be implemented through a qualified domestic relations order when final judgment is eventually entered, and imposes no burden on plan administration?

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BRIEF FOR RESPONDENTS

OPINIONS BELOW

The Washington Supreme Court's opinion (Pet. App. 1a-28a) is reported at 989 P.2d 80. The Washington Court of Appeals' opinion (Pet. App. 29a-44a) is reported at 968 P.2d 924. The Washington Superior Court's summary judgment orders (Pet. App. 45a-48a) are not reported.

JURISDICTION

For the reasons described in respondents' brief in opposition to certiorari, BIO 4-5, this Court lacks jurisdiction because the decision of the Washington Supreme Court in these consolidated proceedings is not a "final judgment or decree" as required by 28 U.S.C. § 1257(a). In particular, as we discuss *infra* at 16-19, this Court's disposition of the federal issue presented may be substantially affected by whether the trial courts on remand from the Washington Supreme Court enter "qualified domestic relations orders" ("QDROs"), which are expressly immune from preemption under ERISA. 29 U.S.C. § 1144(b)(7).

Petitioner is therefore wrong to state that this Court has jurisdiction in this case because "nothing remains to be done but the mechanical entry of judgment by the trial court." Pet. Br. 1 (citation omitted). The form and content of the remedy to be entered on remand are neither pre-determined nor "mechanical" because they could take this case out of the realm of preemption entirely and, furthermore, easily could give rise to new federal-law disputes over the form and effect of the QDROs. When proceedings on remand might impact federal issues, the judgment is not final and this Court lacks jurisdiction. See *Minnick* v. *California Dep't of Corrections*, 452 U.S. 105, 120 (1981) (decision nonfinal because subsequent proceedings may "have a significant effect on the federal constitutional issues presented"); *San Diego Gas & Elec. Co.* v.

San Diego, 450 U.S. 621, 632-33 (1981) (no finality in takings context where courts have resolved only the right or the remedy, but not both).[1] The Court therefore should dismiss this case for want of jurisdiction.

STATUTES INVOLVED

RCW 11.07.010 is reproduced as the appendix to this brief.

STATEMENT

a. Respondents Samantha and David Egelhoff ("the children") are the children of David Egelhoff ("David") and his first wife, Kate Breiner. Petitioner Donna Rae Egelhoff ("Donna") was David's second wife. David and Donna had no children.

While married to Donna, David participated in two ERISA-governed benefit plans through his employer, Boeing Corporation. He participated in an "employee pension plan," 29 U.S.C. § 1002(2), known as the Voluntary Investment Plan ("VIP" or "pension plan"), which accumulated a total value of approximately $35,000 during his employment. He also received a life insurance policy qualified as an "employee welfare benefit plan," *id.* § 1002(1), which was administered by Aetna Insurance Company and which provided an accidental-death benefit of $46,000.

David and Donna divorced in the spring of 1994. Washington community property law required that they divide all their assets between them. See Superior Court Judges Ass'n Educ. Comm., Benchbook Subcomm., *Washington Judges Family Law Benchbook* 39 (2d ed. 1996). Divisible "property" in Washington includes the present value of pension benefits, which for a defined contribution plan, such as David's VIP, is the account balance. *Id.* 31. By contrast, a contingent life-insurance benefit is treated as an "expectancy," not included within divisible property. *Id.*

[1] See also *Pope* v. *Atlantic Coast Line R.R. Co.*, 345 U.S. 379, 382 (1953) (finality rule avoids "decision on federal questions which, after later proceedings, might subsequently prove to be unnecessary and irrelevant to a complete disposition of the litigation"); *Republic Natural Gas Co.* v. *Oklahoma*, 334 U.S. 62, 69, 71 (1948) (no finality when basic right has been decided, but remedy may be accomplished "in any one of three ways" and "the matters left open may generate additional federal questions").

David and Donna's jointly presented and court-approved divorce decree sets forth "an equitable division" of their community property, specifying the assets to be retained by each. JA 22, 31-34. Donna was assigned ten different pieces of property, including a business, an IRA, and stock. *Id.* 34. David received, *inter alia*, the pension plan: "100% of his Boeing retirement 401K and IRA." *Id.* 33. The contingent life-insurance benefit, as a mere expectancy, was not included in the property required to be divided and the rights to it therefore remained with David.

b. Eight weeks after the divorce, David was involved in an automobile accident and died intestate. Through means not specified in the record, but as is typical when death benefits are to be paid, the two plans obtained a copy of David's death certificate. That standard-form state certificate identifies David's date of death and states that he has no surviving spouse. See Resp. Lodging, Exh. 1.

Aetna, recognizing that Donna was divorced from David – expressing its "sincere sympathy" for her "ex-spouse's death," JA 29 – paid the life insurance benefits to her. Regarding David's VIP account balance, which automatically converted to a death benefit, JA 39, Boeing agreed to await court determination of the proper recipient. Resp. Lodging, Exh. 2.

c. Before this Court are two state-law actions, consolidated on appeal, regarding the proper disposition of the two death benefits. The suits are entirely between the children and Donna; the plans are not now and have never been parties

and no claim is stated against them. The Washington Supreme Court held, based on a state statute, that the children were entitled to the value of both assets. The court also rejected Donna's claim that the statute was preempted by ERISA.

1. The children brought a state-law conversion suit against Donna for the value of the life-insurance benefit. JA 24. The children separately moved in the probate proceedings regarding David's estate for a determination that they were entitled to the pension benefits. *Id.* 20; see RCW 11.96.070(2)(f) (disposition of nonprobate assets may be determined in probate proceedings).

2. Donna contended that she was entitled to the benefits as the designated beneficiary of the life insurance and pension plans. The life-insurance beneficiary designation form is in the record. It specifically inquires into David's marital status and designates as the beneficiary "Donna R. Egelhoff Wife." Resp. Lodging, Exh. 3. The pension beneficiary designation form is not in the record. Boeing, which has appeared as an *amicus* and is financing this litigation on behalf of Donna, has refused to provide respondents' counsel with a copy of the designation form. Donna's counsel, in turn, have refused to request the form from Boeing. Thus, although the parties have stipulated that David named Donna as the beneficiary of the pension plan, it is not known whether, as on the insurance form, he specified on the pension form "Donna R. Egelhoff *Wife*."

The children argued that Donna had waived any right to the pension proceeds by agreeing to a divorce decree allocating various assets to her and "100%" of the pension to David, and that Donna's divorce from David invalidated any prior designation of her as beneficiary of David's benefits under RCW 11.07.010. That statute provides that upon divorce, unless the divorce decree otherwise specifies, a designation "that relates to the payment or transfer at death of the decedent's interest in a nonprobate asset in favor of or granting an

interest or power to the decedent's former spouse is revoked." RCW 11.07.010(2)(a), (b)(i), (b)(ii). Nonprobate assets include essentially all those that pass upon death through instruments other than a will. *Id.* 11.07.010(5). The statute creates a specific cause of action against an ex-spouse for the proceeds of wrongly acquired benefits. *Id.* 11.07.010(4)(a).

The statute sets only a default rule. Any instrument governing a nonprobate asset can avoid the statute by merely saying so in the instrument itself or on any particular designation. RCW 11.07.010(2)(b)(i); JA 11. Such a statement in the instrument or designation categorically exempts that nonprobate asset from the rule. *Id.* In addition, the participant can provide that the ex-spouse will remain the beneficiary. RCW 11.07.010(2)(b)(i); JA 11. Finally, the statute does not affect annuities or other benefits mandated by federal or state law or otherwise guaranteed by an instrument such as a QDRO. RCW 11.07.010(2)(b)(ii), (iii).

For instruments subject to the statute, entitlement to a death benefit is determined according to the terms of the plan "as if the former spouse failed to survive the decedent." RCW 11.07.010(2)(a). In this case, neither of the plans is in the record. In the Washington appellate courts, Boeing provided respondents' counsel with a copy of the pension plan. Resp. Lodging, Exhs. 4 (1996 version of plan), 5 (plan document detailing pre-1996 amendments). But in this Court, it has refused to provide a copy of the life insurance plan. Donna's counsel, again, have refused to request that Boeing provide the plan.

The record does contain "[a]n incomplete 'summary'" of both plans, Pet. App. 3a n.5 (state supreme court opinion), in the form of "summary plan descriptions" ("SPDs"). Under the pension SPD, if the designated "beneficiary is no longer living," or if there is "an invalid beneficiary designation" or the participant "ha[s] not designated a beneficiary on the appropriate form," benefits will be paid to the following alternate beneficiaries:

1. To [the participant's] surviving spouse.
2. If there is no surviving spouse, to [the participant's] children in equal shares.
3. To another relative designated by the Voluntary Investment Plan Committee or to [the participant's] estate.

JA 40. Thus, according to the pension SPD, because David had no "surviving spouse" when he died, entitlement to the benefits rested with respondents as David's "children."

Unlike the pension SPD, the life insurance SPD does not include an alternate beneficiary scheme.

3. Donna argued that RCW 11.07.010 was preempted by ERISA. Donna further argued that the divorce decree did not specify that David would receive the pension asset upon death and hence she did not waive her claim to it.

4. In summary orders, both trial courts held that Donna was entitled to the pension and life-insurance proceeds. Pet. App. 46a, 48a.

5. The children appealed. The Washington Court of Appeals consolidated the two cases and reversed, holding that "ERISA does not preempt the state law in question and that Donna was not entitled to the insurance proceeds or pension funds." *Id.* 30a. The court found the children entitled to the pension benefits as alternate beneficiaries under the SPD, Pet. App. 34a, and entitled to the life-insurance benefits because, absent an alternate beneficiary, David's estate became the legal beneficiary and the children are statutory heirs to his estate. *Id.* (citing RCW 11.05.040, 48.18.390).

The court of appeals held that ERISA does not preempt RCW 11.07.010, relying on this Court's cases substantially limiting ERISA preemption in "areas traditionally left to state regulation." Pet. App. 35a-36a, 40a-41a. The court of appeals found no substantial burden on plan administration because RCW 11.07.010 "does not affect the administration of

plans; instead, it affects merely the ultimate ownership of distributed benefits." *Id.* 39a (citation omitted). The court further found that Washington law required the plans to make no factual inquiries beyond those already required by ERISA and allowed conflicting claims to benefits to be resolved by the courts. *Id.* 40a & n.13. The court finally emphasized that its holding only permitted the children "to look solely to Donna for the funds," *id.* 43a, and that any potential claim against the plans would have to be addressed in "a separate action," *id.* 44a n.18.

6. Donna appealed. The Washington Supreme Court affirmed respondents' entitlement to the value of the benefits, Pet. App. 28a, and remanded for further proceedings.

The state supreme court first carefully considered this Court's ERISA preemption decisions, including its narrowing of the preemption doctrine since *New York State Conference of Blue Cross & Blue Shield Plans* v. *Travelers Insurance Co.*, 514 U.S. 646 (1995), Pet. App. 13a, 18a, and the presumption that ERISA does not supplant state laws in areas traditionally regulated by the states, *id.* 14a, 19a. The court found that presumption applicable because RCW 11.07.010 is an exercise of "Washington's sovereign interest in exercising its traditional police powers in the area of domestic relations and family law." *Id.* 15a; see also *id.* 19a ("RCW 11.07.010 involves an area of domestic and family [law] that has long been the traditional domain of the states.").

The presumption against preemption is not overcome here, the court concluded, because RCW 11.07.010 "does not alter the nature of the plan itself, the administrator's fiduciary duties, or the requirements for plan administration." Pet. App. 21a. Instead, when RCW 11.07.010 applies, it merely "bring[s] the [plan's] default distribution provisions into effect." *Id.* The court also rejected Donna's claims that the statute interfered with or burdened plan administration, and rejected any alleged conflict with ERISA's anti-alienation provision. *Id.* 16a-17a, 22a & n.100, 24a, 26a.

d. On remand, the trial court in the pension proceedings entered an order specifying that respondents were entitled to the benefits. Resp. Lodging, Exh. 6. No order has yet been entered in the life insurance proceedings.

e. Donna petitioned this Court, which granted certiorari.

SUMMARY OF ARGUMENT

1. Petitioner has attacked an imagined version of Washington law and speculative applications of that law that have little to do with this case. For three overarching reasons not even addressed by petitioner, respondents' claims under Washington state law are not preempted. First, RCW 11.07.010 is strictly optional – any instrument governing a nonprobate asset, including ERISA plans, can completely opt out of the law. The statute expressly states that the divorce-revocation rule does not apply whenever "[t]he instrument governing disposition of the nonprobate asset expressly provides otherwise." RCW 11.07.010(2)(b)(i); see also JA 11. In short, Washington law simply sets a default rule, which creates no cognizable burden on ERISA plans.

Second, the cases under review, and any subsequent final judgments therein, are exclusively between Donna and the children, and do not involve or create rights against any ERISA plans. Whatever burdens on ERISA plans that petitioner may imagine arise from other portions of Washington law; the provision at issue in this case imposes no conceivable burden whatsoever on any ERISA plan.

Third, when the abstract rights in this case are reduced to actual judgments, they can be in the form of qualified domestic relations orders ("QDROs"), which are expressly exempt from ERISA preemption. 29 U.S.C. § 1144(b)(7). Indeed, the initial order entered on remand regarding the pension proceeds already satisfies the requirements of a QDRO. Any conceivable dispute over the exempt status of the eventual orders is best taken up on remand and only by this Court after the entry of final orders in this case.

2. Petitioner's affirmative arguments are incorrect.

a. This case represents a ideal example of where this Court's presumption against preemption of state law applies at its fullest. The case involves the traditional state-law area of family law and domestic relations, dealing as it does with the consequences of divorce. Washington has a strong interest in seeing that the default consequences of divorce are compatible with its community property regime and with the treatment of all other devisable assets. The presumption against preemption is confirmed rather than rebutted by ERISA's QDRO provisions, which provide an unimpeachable safe harbor for a certain class of orders that would otherwise conflict with ERISA provisions, but that in no way imply preemption of all other domestic relations orders that do not so conflict.

b. Numerous other longstanding state laws dealing with beneficiary designations corroborate that this area is one of traditional state, not federal, law. In particular, state laws concerning revocation of benefits for "slayers" who kill their spouses, state simultaneous death statutes, and state law governing the content of such common beneficiary terms as spouse, children, death, and divorce, all show sweeping and important state involvement in beneficiary determinations.

c. Nor does RCW 11.07.010 interfere with the uniform administration of ERISA plans or impermissibly "bind" plan administrators to certain choices. The numerous exceptions to ERISA preemption illustrate that uniformity is only one goal among the many animating ERISA. Uniformity routinely has yielded to other important goals and should not be given talismanic weight, especially where there is no danger of deterring the adoption or maintenance of benefit plans. Furthermore, RCW 11.07.010 does not create an impermissible burden on plans by requiring them to determine the marital status of plan participants. Two ERISA provisions already require the identical inquiry, demonstrating both that Washington law imposes no new administrative requirement and

also that Congress concluded that an inquiry into participants' marital status would not unduly burden ERISA plans. Nor will ERISA plans be impermissibly burdened by multiple state laws or the risk of double liability. The variation in state law is minor at best, the applicable law can be readily determined, and plans can always specify which law to apply or opt out entirely. Finally, in any instance of conflicting claims, plans can always leave resolution of the dispute to the parties and the courts without themselves having to bear the decisional burden.

d. Petitioner is also wrong in her claim that RCW 11.07.010 conflicts with various ERISA provisions imposing duties on plans vis-à-vis beneficiaries and, relatedly, constitutes a prohibited "alienation" of benefits from a beneficiary to a third party. RCW 11.07.010 provides that entitlement to benefits is determined under the provisions of the plan, and consequently any alternate recipient is also a beneficiary under the plan and under ERISA. ERISA defines "beneficiary" as "a person designated by a participant, *or by the terms of an employee benefit plan*, who is *or may become* entitled to a benefit thereunder." 29 U.S.C. § 1002(8) (emphasis added). Here, the children plainly fit that definition because the pension plan expressly provides that they "may become entitled" to benefits in a variety of circumstances – *i.e.*, if there is no surviving spouse and the named beneficiary predeceases the participant, or the beneficiary designation is "invalid," or the participant fails to make a designation at all. JA 40. For the same reason, RCW 11.07.010 does not conflict with ERISA's "anti-alienation" provision: There is no alienation in this case, and the benefits are paid out according to the terms of the plan, not to any third-party assignee.

e. Nor does RCW 11.07.010 conflict with the duty of plan administrators to abide by the terms of the plan. 29 U.S.C. § 1104(a)(1)(D). State law does not require anything in conflict with the plan, and even if it did, only ERISA's provisions themselves, and not the ERISA plans, can preempt

state law. Congress has not delegated such preemptive authority to plans that they may write their way out of all state laws merely by saying so in an ERISA plan.

f. Even were this Court to find that ERISA preempted state law in this area, because ERISA does not address this issue at all, courts will inevitably have to choose or create law to fill those gaps. If this Court were to favor application of federal law, and hence the creation of a federal common-law rule, the net result should be the same: Any federal common law should look to state law for its content and hence adopt state statutes governing the impact of divorce on beneficiary designations in those states having such statutes or comparable common-law rules.

g. Finally, petitioner has not overcome the presumption against preemption because she has not produced documents essential to her claims – the life-insurance plan and the pension plan designation form – which are not in the record and which her counsel refuse to request from Boeing.

ARGUMENT

I. THE JUDGMENT SHOULD BE AFFIRMED ON SEVERAL GROUNDS NOT ADDRESSED BY PETITIONER.

A. RCW 11.07.010 Allows Plans To Opt Out and Thus Does Not Impose A Substantial Burden.

Petitioner's argument fundamentally rests on the assertion that RCW 11.07.010 will interfere with ERISA plan administration because plans must determine the marital status of their participants and because the states disparately treat spousal designations upon divorce. Those burdens are imaginary for a variety of reasons discussed below, but there is one especially glaring flaw in petitioner's argument: RCW 11.07.010 sets only a *default rule*, from which plans can *completely* opt out at their own discretion. The divorce-revocation rule does not apply whenever "[t]he instrument

governing disposition of the nonprobate asset expressly provides otherwise." RCW 11.07.010(2)(b)(i); see also JA 11.

Having to express a decision to opt out is not a cognizable burden. The pension plan SPD already states that "*documents* such as divorce decrees" cannot change a designation, JA 40 (emphasis added), and the SPD need only further specify that the same rule applies to *statutes* regulating designation upon divorce. Including such a statement is no burden at all because ERISA plans are regularly amended in numerous respects. *E.g.*, Resp. Lodging, Exh. 4, at 14-1 (pension plan may be amended "at any time and for any reason"). For example, between 1994 and 1996, the pension plan at issue in this case was amended in seven different respects. Resp. Lodging, Exh. 5, at 3.

This minor effort required of the plan to express its choice to avoid Washington's default approach is trivial compared to the cost for avoiding the preferred state options in *Travelers* or *California Division of Labor Standards Enforcement* v. *Dillingham Construction, N.A.*, 519 U.S. 316 (1997). In *Travelers*, a plan was free to insure through someone other than the Blues, but would pay a considerable premium if it exercised that choice. 514 U.S. at 650, 652. And in *Dillingham*, the apprenticeship programs could likewise ignore California's requirements, but only at the cost of their beneficiaries not qualifying for apprentice wages on certain projects. 519 U.S. at 319, 332. Yet in both of those cases, this Court found that state law merely created an incentive to choose a preferred path, not an impermissible burden on plans. *Travelers*, 514 U.S. at 659-60; *Dillingham*, 519 U.S. at 332. In this case, by contrast, there is no adverse consequence to any plan or beneficiary that chooses to avoid RCW 11.07.010.

Any incidental burden on plans is also far overborne by the state's substantial interest in setting a default rule. As noted below, Washington applies the same rule of revocation upon divorce to all probate and nonprobate assets. See *infra* at 22-23. Citizens of Washington are therefore able to manage their affairs with a clear understanding that past probate and nonprobate designations of former spouses are ineffective. Indeed, such uniformity was a principal purpose of extending the divorce-revocation rule from wills to nonprobate assets. See *infra* at 22-23. When this uniform rule will not apply – as when an ERISA plan would avoid the revocation rule – it is essential that Washington citizens be on notice so they will know to file a revised beneficiary designation form. RCW 11.07.010 simply requires that such a choice appear explicitly so that affected citizens can manage their affairs accordingly.[2]

Petitioner's contrary approach would hold that spousal designations are automatically revoked by statute for all wills and nonprobate assets *except* ERISA plans, as to which state law is preempted. Such a rule would cause serious confusion and injustice if for no other reason than that average citizens, not conversant in ERISA coverage or preemption, will not understand which designations are revoked upon divorce.

It is virtually inconceivable that Congress intended to prevent states from adopting such a clear default rule regarding the disposition of assets upon divorce. Because determinations regarding beneficiary status are squarely within the traditional sphere of state regulation, particularly as applied to family law, a strong presumption exists that Congress did not intend to preempt divorce-revocation statutes at all. See *infra* at 19-20. But when those statutes simultaneously address any federal administrative concerns by allowing ERISA plans to opt entirely out of the statute, there is no serious basis for invalidating state law.

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[2] The pension SPD in this case illustrates the state's concern. The SPD instructs participants that they must designate their spouses absent the spouse's express consent to the contrary. JA 39-40. But the SPD does not explain that any such obligation terminates upon divorce. Without the plain statement required by RCW 11.07.010, participants may be left seriously confused about the effect of a divorce on their designations.

B. The Final Judgments In This Case Will Run Only Against Donna, Not Against The Plans.

Petitioner's purported concerns for the administration of ERISA plans are wholly misplaced for the further reason that the Washington Supreme Court's holding does not impose any duties on ERISA plans or create any rights against such plans. Instead, this is a state-law action brought under a statutory provision that applies only to private parties. Donna possesses an asset (the life insurance proceeds) and asserts that she is entitled to retain the value of another (the pension proceeds). The children dispute her claim, based on the specifics of Donna's divorce decree and the legal consequences of divorce in general.

Critically, the provision on which the children rely allows them to state a claim *only* against Donna, not against the plans. Under subsection (4)(a) of RCW 11.07.010, "a former spouse * * * who, with actual knowledge * * * receives payment or transfer of a nonprobate asset to which that person is not entitled under this section is * * * personally liable for the amount of the payment or value of the nonprobate asset[] to the person who is entitled to it under this section."

As the Washington Court of Appeals explained, "the children [would] have to bring a separate action" against the plans. Pet. App. 44a n.18. Such a suit would be brought under a different provision, subsection (3)(a), which expressly provides that a plan "is *not* liable for making a payment or transferring an interest in a nonprobate asset to a decedent's former spouse whose interest in the nonprobate asset is revoked under this section." RCW 11.07.010(3)(a) (emphasis added). The only exception is if the plan pays benefits to the former spouse with "actual knowledge" that the marriage has been invalidated, which is defined to require "written notice * * * received after the decedent's death and within a time that is sufficient to afford the payor or third party a reasonable opportunity to act upon the knowledge." *Id.* 11.07.010(3)(d). The notice must identify the specific nonprobate asset and

must "inform the payor * * * of the revocation of the provisions in favor of the decedent's spouse." *Id.* There is a specific presumption, defeatable "only by clear and convincing evidence," that five-days notice is not sufficient. *Id.*[3]

Although petitioner is wrong about preemption even as to suits that *are* brought against ERISA plans directly, that question is entirely academic. Petitioner herself recognizes that the Washington Supreme Court decision resolves matters only "[a]s between the parties to this case." Pet. Br. 2. Even if this Court were to agree with Donna that an action against the plans would be preempted, such an advisory ruling would only argue for severing subsection (3)(a), leaving in place the children's right to proceed against Donna under subsection (4)(a). See *Leonard* v. *Spokane*, 897 P.2d 358, 361-62 (Wash. 1995) (unlawful provisions are severed unless legislature clearly would have intended to the contrary).[4]

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[3] After the Washington Court of Appeals decision, the children did in fact bring such an action under this provision against Aetna, which in turn asserted that the claim was preempted by ERISA. That case settled, however, before that dispute could be resolved. Under the terms of the settlement, the children retain a substantial direct financial interest in recovering the life-insurance proceeds from Donna.

[4] This Court's decision in *Boggs* v. *Boggs*, 520 U.S. 833 (1997), is not to the contrary. Preemption as to the suit between private individuals in *Boggs* was based on a conflict with a substantive provision of ERISA that directed benefits to surviving spouses. Louisiana law sought to divert benefits from the ERISA-mandated recipient and towards a new class of non-participant, non-beneficiaries not recognized at all by ERISA. 520 U.S. at 843, 847. In the current case, however, ERISA has no substantive policy favoring any specific elective beneficiary, and RCW 11.07.010 creates no new class of recipient. Rather, the statute merely invalidates a particular designation, thereby leading to a different, but existing, beneficiary having primary claim to the benefits. See *infra* at 39-41. In addition, under the Louisiana law in *Boggs*, the plaintiffs' claimed right applied equally to the plan itself, 520 U.S. at 854, unlike the distinct provision of Washington law relied upon by respondents.

Fort Halifax Packing Co. v. *Coyne*, 482 U.S. 1 (1987), much relied upon by petitioner, in fact supports respondents' view that, absent a spe-

C. The Final Orders in This Case Can Be QDROs That Are Fully Immune from Preemption.

A third overarching reason why petitioner's theory of preemption is flawed is that it looks at the rights under RCW 11.07.010 in the abstract, without considering the form of court order that would implement those rights. In particular, the statute can and generally will be effectuated through a qualified domestic relations order, which is expressly exempt from ERISA preemption. See 29 U.S.C. § 1144(b)(7).

Seeming to recognize that she would lose this case were her divorce decree a QDRO directing revocation of beneficiary designations, Donna argues that the decree does not in fact mention death benefits and is not technically in the form of a QDRO. Pet. Br. 23-24 n.11. But those arguments are irrelevant to the eventual remedial orders in these cases because the trial courts on remand from the Washington Supreme Court can and will expressly address the disputed benefits and satisfy the technical requirements for QDROs. Indeed, the order on remand in the pension proceedings already satisfies the QDRO requirements. And even if that order is not "qualified," it (like the eventual order in the life-insurance proceedings) can later be framed as a QDRO.

As relevant here, a court order is a QDRO under ERISA if it: (1) is a domestic relations order; (2) recognizes an alternate

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cific substantive concern for a recipient of benefits such as a surviving spouse, ERISA is uninterested in the disposition of benefits as between private parties in a subsequent suit not involving an ERISA plan: "ERISA's pre-emption provision does not refer to state laws relating to 'employee benefits,' but to state laws relating to 'employee benefit plans.'" 482 U.S. at 7. The Court thus concluded that "[t]he argument that ERISA pre-empts state laws relating to certain employee benefits, rather than to employee benefit plans, is refuted by the express language of the statute, the purposes of the pre-emption provision, and the regulatory focus of ERISA as a whole. If a State creates no prospect of conflict with a federal statute, there is no warrant for disabling it from attempting to address uniquely local social and economic problems." *Id.* at 19.

payee's right to receive benefits; (3) specifies the name and address of the participant and of each alternate payee, the plan to which such order applies, and the amount or percentage of benefits to be paid each alternate payee; and (4) does not increase or require new benefits under the plan. 29 U.S.C. § 1056(d)(3)(B)-(D).

ERISA defines a "domestic relations order" as "any judgment, decree, or order (including approval of a property settlement agreement) which * * * relates to the provision of * * * marital property rights to a spouse, former spouse, child, or other dependent of a participant, and * * * is made pursuant to a State domestic relations law (including a community property law)." 29 U.S.C. § 1056(d)(3)(B)(ii). Any order in this case plainly would relate to both the "former spouse" (Donna) and to the "child[ren]" of the deceased participant (respondents). Furthermore, RCW 11.07.010 governs the disposition of assets upon divorce and therefore falls within state domestic relations law, while divorce decrees applying the statute are entered pursuant to state community property law. Indeed, the Washington Supreme Court explained that this case involves "Washington's sovereign interest in exercising its traditional police powers in the area of domestic relations and family law." Pet. App. 15a; cf. *Mackey* v. *Lanier Collection Agency & Service, Inc.*, 486 U.S. 825, 834 (1988) (relying upon state supreme court's characterization of state law as "procedural").[5]

The order on remand in the pension proceedings further identifies the "alternate payees" – the children, see 29 U.S.C. § 1056(d) (child qualifies as alternate payee) – as well as the participant, plan, and benefit amounts involved. See Resp. Lodging, Exh. 6, at 1 (order applies to all of "the proceeds in

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[5] The orders on remand are thus simply domestic relations orders implementing the expected and intended legal effect of Donna and David's original divorce decree by rejecting Donna's claim that she held any right to the plan benefits after the divorce.

the Voluntary Investment Account (VIP Plan)" of David Egelhoff). The order also references a prior stay order to which the plan had agreed and which expressly applies to "the Boeing Company Voluntary Investment Plan of David A. Egelhoff, deceased." Resp. Lodging, Exh. 2. That the addresses are not listed on the face of the remand order is not a disqualifying defect, particularly because that information is in the court file and well known to Boeing. See S. REP. NO. 98-575, 98th Cong., 2d Sess. 20 (1984), *reprinted in* 1984 U.S.C.C.A.N. 2547, 2566 ("The committee intends that an order will not be treated as failing to be a qualified order merely because the order does not specify the current mailing address of the participant and alternative payee if the plan administrator has reason to know that address independently of the order."); see also *Stewart* v. *Thorpe Holding Co. Profit Sharing Plan*, 207 F.3d 1143, 1151 (CA9 2000) (absence of current mailing address "is not a fatal defect"; citing legislative history and collecting cases). And, again, any potential defect can and will be cured through further proceedings in the trial court.

Any objection by Donna that the plans would not treat the orders on remand as QDROs faces two insuperable obstacles. First, the plans' QDRO provisions are not in the record and, once again, Boeing has refused to make those provisions available to respondents' counsel and Donna has refused to ask Boeing to provide them. Second, any disagreement over the required form of the orders only confirms that the judgment in this case is not yet final. See *supra* at 1-2. On remand, the children would be in a position to cure any asserted defects in the trial courts' remedial orders. Furthermore, federal-law disputes easily could emerge regarding the form and effect of the QDROs.

In the end, the mere possibility that the final orders in this case can be in the form of QDROs demonstrates that ERISA does not preempt RCW 11.07.010. See S. REP. NO. 98-575, *supra*, at 19, *reprinted in* 1984 U.S.C.C.A.N. at 2565 ("Because rights created, recognized, or assigned by a qualified domestic relations order, and benefit payments pursuant to such an order, are specifically permitted under the bill, State law providing for these rights and payments under a qualified domestic relations order *will continue to be exempt* from Federal preemption under ERISA." (emphasis added)). Petitioner's effectively facial attack on the statute is thus both premature and wrong on the merits.

II. PETITIONER'S ASSERTED BASES FOR PREEMPTION ARE ERRONEOUS.

Repeated variously in the context of both conflict and field preemption, petitioner's alleged tensions between RCW 11.07.010 and ERISA are mistaken. Neither the specific terms nor the general and mixed purposes of ERISA demonstrate an intent by Congress to preempt this traditional area of state regulation. The provision of state law relied upon by respondents does not interfere with plan administration, bind plan choices, undermine protections for beneficiaries, or in any other way impermissibly burden ERISA plans.

A. A Strong Presumption Against Preemption Applies In This Case.

1. Through a flawed analysis of both ERISA and Washington state law, petitioner claims that RCW 11.07.010 intrudes on an area that Congress intended to reserve exclusively for federal law. But as this Court has recognized in its seminal *Travelers* decision and elsewhere, preemption analysis under ERISA must begin with the

> starting presumption that Congress does not intend to supplant state law. * * * Indeed, in cases like this one, where federal law is said to bar state action in fields of traditional state regulation, * * * we have worked on the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the *clear and manifest* purpose of Congress.

514 U.S. at 654-55 (citations and quotation marks omitted) (emphasis added); see also *Boggs*, 520 U.S. at 840; *DeBuono* v. *NYSA-ILA Med. & Clinical Servs. Fund*, 520 U.S. 806, 813 (1997); *Dillingham*, 519 U.S. at 336. In the areas of family law and family property law, the presumption against preemption is especially strong, and such state law "must do '*major damage*' to '*clear and substantial*' federal interests before the Supremacy Clause will demand that state law be overridden." *Hisquierdo* v. *Hisquierdo*, 439 U.S. 572, 581 (1979) (citation omitted) (emphases added).

An appropriately restrained notion of ERISA preemption thus looks not to *any* interaction between state law and ERISA plans or concerns, but rather only to "those 'conflicting directives' from which Congress meant to insulate ERISA plans." *Travelers*, 514 U.S. at 662 (citation omitted). Furthermore, when a multitude of state laws would be swept away by any particular preemption theory, that consequence speaks not to the proper breadth of ERISA, but rather makes suspect the particular theory of preemption and calls for even greater attention to the presumption that Congress did not mean to displace traditional areas of state law. *Id.* at 661, 664-65. In areas in which ERISA has nothing to say on the issues addressed by state law, sweeping preemption of such law would be "unsettling" to say the least, and should be avoided. *Dillingham*, 519 U.S. at 330; *Travelers*, 514 U.S. at 665.

2. Petitioner attempts to turn the presumption against preemption of family law on its head by arguing that state law survives only insofar as ERISA provides "precisely tailored and specific means" such as the QDRO provisions for sustaining state law. Pet. Br. 23-24. The short answer is that *Travelers* and its progeny categorically reject a sweeping implied preemption that would leave such a narrow space for state law. Those cases instead adopt a flat presumption against preemption that views state law as filling all the space not expressly forbidden it by Congress.

The longer answer is that petitioner misunderstands ERISA's QDRO provisions, which establish a safe harbor under which domestic relations orders will *per se* be exempt from preemption regardless whether they might otherwise constitute an impermissible alienation or impermissibly "relate to" an ERISA plan. That safe harbor does *not*, however, create the inference that all other domestic relations orders, or domestic relations law generally, are thereby preempted. Rather, the 1984 amendments adopting the QDRO provisions were understood by Congress to confirm that state law governing rights among family members "will *continue* to be exempt from federal preemption under ERISA." S. REP. NO. 98-575, *supra*, at 19, *reprinted in* 1984 U.S.C.C.A.N. at 2565 (emphasis added). Numerous domestic relations orders are not preempted notwithstanding that they do not technically qualify as QDROs.[6] Indeed, the anti-alienation rule (which is the primary basis for alleging a conflict with domestic relations orders and hence the primary impetus for the QDRO provisions) does not apply *at all* to non-pension plans. 29 U.S.C. § 1056(d)(1). Given the limited problem QDROs were meant to solve, there is no "*inclusio unius*" inference that would exclude all other applications of state domestic relations law.[7]

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[6] For example, simple divorce decrees impact ERISA plans but are not thereby automatically preempted. Benefits payable to a "spouse" are utterly at the mercy of a state court order of divorce, which alters the recipient or entirely eliminates the payment of such benefits.

[7] The QDRO provisions thus raise an inference of preemption only as to state law that independently conflicts with ERISA. In *Boggs*, this Court's discussion of QDROs went to maintaining a narrow exception to the effect of *conflict* preemption, not to defining broader field preemption. 520 U.S. at 841. But here there is no conflict between RCW 11.07.010 and ERISA's substantive requirements, hence there is no need for a QDRO. Indeed, if anything, the QDRO provisions support respondents' position. As the federal government acknowledged below, Pet. App. 53a n.1, if the parties' intent were truly that Donna would receive the benefits, she could

3. By addressing the intersection between divorce and the disposition of nonprobate assets, RCW 11.07.010 spans two areas of traditional state concern: family law and probate and trust law. Similar statutes revoking designations of former spouses in wills are longstanding and now exist in virtually every state.[8] These statutes are based on the conclusion that "because most testators do not want to benefit ex-spouses, such a will no longer reflects the intentions of the testator. Justice will more often be served if divorce is treated as a species of partial revocation and litigation on the question is foreclosed." John H. Langbein, *The Nonprobate Revolution and the Future of the Law of Succession*, 97 HARV. L. REV. 1108, 1135 (1984). In recent years, there has been a growing recognition that the same rationale applies to the death benefits payable under nonprobate assets – such as life insurance policies, pension accounts, joint accounts, and revocable trusts – which are "functionally indistinguishable" from wills.

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have secured a QDRO to that effect, which would not have been affected by RCW 11.07.010.

[8] Only the District of Columbia, Louisiana, Mississippi, and Vermont lack revocation-by-divorce statutes applicable to wills. Ala. Code § 43-8-137; Alaska Stat. § 13.12.804; Ariz. Rev. Stat. § 14-2804; Ark. Code Ann. § 28-25-109; Cal. Prob. Code § 6122; Colo. Rev. Stat. § 15-11-804; Conn. Gen. Stat. § 45a-257c; Del. Code Ann. tit. 12, § 209; Fla. Stat. § 732.507; Ga. Code Ann. § 53-4-49; Haw. Rev. Stat. § 560:2-804; Idaho Code § 15-2-508; 755 Ill. Comp. Stat. § 5/4-7; Ind. Code § 29-1-5-8; Iowa Code § 633.271; Kans. Stat. Ann. § 59-610; Ky. Rev. Stat. Ann. § 394.092; Me. Rev. Stat. Ann. tit. 18-A, § 2-508; Md. Code Ann., Est. & Trusts § 4-105; Mass. Ann. Laws ch. 191, § 9; Mich. Stat. Ann. § 27.12807; Minn. Stat. § 524.2-804; Mo. Rev. Stat. § 474.420; Mont. Code Ann. § 72-2-814; Neb. Rev. Stat. § 30-2333; Nev. Rev. Stat. § 133.115; N.H. Rev. Stat. Ann. § 551:13; N.J. Stat. Ann. § 3B:3-14; N.M. Stat. Ann. § 45-2-804; N.Y. Est. Powers & Trusts Law § 5-1.4; N.C. Gen. Stat. § 31-5.4; N.D. Cent. Code § 30.1-10-04; Ohio Rev. Code Ann. § 2107.33; Okla. Stat. tit. 84, § 114; Or. Rev. Stat. § 112.315; 20 Pa. Cons. Stat. § 2507; R.I. Gen. Laws § 33-5-9.1; S.C. Code Ann. § 62-2-507; S.D. Codified Laws § 29A-2-804; Tenn. Code Ann. § 32-1-202; Tex. Prob. Code Ann. § 69; Utah Code Ann. § 75-2-804; Va. Code Ann. § 64.1-59; W. Va. Code § 41-1-6; Wis. Stat. § 854.15; Wyo. Stat. Ann. § 2-6-118; Wash. Rev. Code § 11.12.051.

See *id.* at 1109, 1137-38. Moreover, the application of the revocation-by-divorce rule to nonprobate assets is regarded as necessary in light of the increasing U.S. divorce rate and the prevalence of nonprobate assets in estate planning. See Lawrence W. Waggoner, *The Multiple-Marriage Society and Spousal Rights Under the Revised Uniform Probate Code*, 76 IOWA L. REV. 223, 224-26 (1991).

The Uniform Probate Code therefore was revised in 1990 to reflect this understanding with the adoption of a new Section 2-804, which (like RCW 11.07.010) provides that unless a governing instrument or court order states otherwise, divorce revokes any disposition of property – including beneficiary designations – made to a former spouse. Since 1990, no fewer than eighteen states have adopted a version of UPC § 2-804 or some other measure to regulate beneficiary designations in nonprobate assets after divorce.[9]

Such statutes further the intent of asset-holders such as plan participants regarding the proper recipient of their assets. Washington thus determined that married persons generally intend for spousal designations to be effective only during the marriage. In the rare circumstance in which that is not the case, the parties address the issue in their divorce decree. Participants also often forget to change their designations upon divorce or, less frequently but far more tragically, die soon after the divorce. RCW 11.07.010 merely accounts for these contingencies where not otherwise provided for.

Washington did not, however, adopt a blanket rule that ignores contrary considerations. Any person or plan that does

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[9] Alaska Stat. § 13.12.804; Ariz. Rev. Stat. § 14-2804; Colo. Rev. Stat. § 15-11-804; Haw. Rev. Stat. § 560:2-804; Mich. Stat. Ann. § 27.12807; Mo. Rev. Stat. § 461.051; Mont. Code Ann. § 72-2-814; N.M. Stat. Ann. § 45-2-804; N.D. Cent. Code § 30.1-10-04; Ohio Rev. Code Ann. § 1339.63; Okla. Stat. tit. 15, § 178; 20 Pa. Cons. Stat. § 6111.2; S.D. Codified Laws § 29A-2-804; Tex. Fam. Code Ann. §§ 9.301-.302; Utah Code Ann. §§ 30-3-7.5, 75-2-804; Va. Code Ann. §§ 20-111.1, 38.2-305; Wash. Rev. Code § 11.07.010; Wis. Stat. § 854.15.

not wish to comply with the divorce-revocation rule need not do so, so long as the instrument governing the nonprobate asset contains a clear statement to that effect. RCW 11.07.010(2)(b)(i); JA 11. The statute also does not revoke any arrangements mandated by law, such as any spousal annuity required by ERISA. RCW 11.07.010(2)(b)(iii); JA 11; *Boggs*, 520 U.S. at 843. Finally, participants themselves can state that their former spouses will continue to receive benefits after the divorce. RCW 11.07.010(2)(b)(i); JA 11.

State interests are furthermore at their apex in determining the disposition of *community* property, regarding which there is otherwise a substantial risk that one spouse will double recover from the marital property. Washington requires that all property be divided equitably between spouses. See *supra* 2-3. David and Donna's divorce decree expressly assigned David "100%" of his pension and Donna received assets of equivalent value in the equitable division of their property. In order to effectuate the divorce decree, it thus was essential that state law terminate Donna's entitlement to the pension. It is for this reason that *amicus* Western Conference of Teamsters Pension Fund is wrong to suggest that it would be sufficient for the state simply to remind plan participants to change their beneficiary designations upon divorce. In a community property state such as Washington, an equitable division of property cannot be accomplished unless separate entitlements to assets are determined in the divorce itself.[10]

There is no dispute that these matters are quintessential subjects of state regulation. Federal law does not address the issue and there is no serious argument that the federal government has any relevant interest at all. Indeed, any extension of federal power into the area would raise substantial consti-

[10] Donna's argument that the divorce does not mention the pension plan's "death benefit" is a total straw man. The "100%" value of the pension that David received in the equitable division of the marital assets simply converted to a death benefit when David was killed. JA 39.

tutional concerns. *United States* v. *Morrison*, 120 S. Ct. 1740 (2000).

4. The facts of this case perfectly illustrate that Washington's concerns were well founded. Donna claims a right to benefits without even attempting to dispute that David did not want her to receive them. Indeed, she is practically brazen in admitting that she is *frustrating* his desires. The record contains uncontradicted, sworn testimony that Donna repeatedly said she would receive the life insurance benefits only because of David's supposed "procrastination" in not changing his designation forms before being killed in the car crash and that David "would be angry if he knew this was happening because that was not what he wanted." JA 18-19.[11]

Parenthetically, the suggestion that David "procrastinated" in changing his designations is of course wrong. He died only a few weeks after the divorce. But even more important, the statute made it unnecessary for him to change the designation form. In fact, accepting Donna's position would no doubt overturn the probate proceedings for thousands of other plan participants who, like David, have died after relying on divorce-revocation statutes such as RCW 11.07.010. Given that substantial reliance interest, the appropriate course under this Court's precedents would be to apply any ruling in favor of preemption only prospectively. See, *e.g.*, *Harper* v. *Virginia Dep't of Tax.*, 509 U.S. 86 (1993).

5. Contrary to the assumptions underlying petitioner's argument, regulation of beneficiary designations is a longstanding area of state, not federal, regulation. In addition to

[11] No one seriously suggests that David consciously intended to leave Donna as his named beneficiary "out of feelings of obligation, remorse, or continuing affection," U.S. Br. 23, and of course in this area of state family law the Washington state legislature's determinations regarding the intent of beneficiaries after divorce are entitled to greater respect than the Solicitor General's. In those rare instances in which a participant *does* wish to leave his or her former spouse as a beneficiary, RCW 11.07.010 requires only a statement to that effect.

the divorce-revocation statutes themselves, several further examples help illustrate the point.[12]

First, like every state other than New Hampshire, Washington (in the form of a so-called "slayer statute") provides that a person who kills his or her spouse is not entitled to receive any benefits or property as a result of the death. RCW 11.84.010 to -.900.[13] Such statutes are functionally indistinguishable from RCW 11.07.010 in that they invalidate a beneficiary designation of an ERISA plan participant. See RCW 11.84.030 ("slayer shall be deemed to have predeceased the decedent as to property which would have passed from the decedent or his estate to the slayer"), 11.84.100(1). Yet, although slayer statutes were enacted as early as the beginning of the last century, with several predating ERISA,[14] there is absolutely no indication that Congress intended such statutes to be preempted. And the federal courts therefore have consistently held that ERISA does not preempt slayer statutes.[15]

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[12] The statutes discussed in the text are in addition to those adopted by Washington and most other states providing that insurance plans must include provisions for determining alternate beneficiaries. See, *e.g.*, Ala. Code § 27-18-9; Alaska Stat. § 21.48.160; Ariz. Rev. Stat. § 20-1264; Ark. Code Ann. § 23-83-115; Colo. Rev. Stat. § 10-7-202; Del. Code Ann. tit. 18, § 3118; D.C. Code Ann. § 35-515(6); Fla. Stat. § 627.564; Ga. Code Ann. § 33-27-3(6); Haw. Rev. Stat. § 431-10D-213(6); Idaho Code § 41-2016; 215 Ill. Comp. Stat. § 5/231.1; Iowa Code § 509.2(6); Kans. Stat. Ann. § 40-434(6); Ky. Rev. Stat. Ann. § 304.16-70(1); La. Rev. Stat. Ann. § 22:176(6); Me. Rev. Stat. Ann. § 2619; Md. Code Ann., Ins. § 17-307; Mo. Rev. Stat. § 376.697(6); Mont. Code Ann. § 33-20-1207(I); Neb. Rev. Stat. § 44-1607(6); Nev. Rev. Stat. § 688B.100; N.J. Stat. Ann. § 17B:27-17; N.H. Rev. Stat. Ann. § 408:16(VI); N.M. Stat. Ann. § 59A-21-17; N.Y. Ins. Law § 3220; N.C. Gen. Stat. § 58-58-140(6); Okla. Stat. tit. 36, § 4102(6); Or. Rev. Stat. § 743.327(1); 40 Pa. Cons. Stat. § 532.6(6); P.R. Laws Ann. tit. 26, § 1408; S.D. Codified Laws § 58-16-42; Tenn. Code Ann. § 56-7-2305(a); Tex. Ins. Code Ann. art. 3.50(2)(6); Vt. Stat. Ann. § 3818; Va. Code Ann. § 38.2-3330(1); Wash. Rev. Code § 48.24.160; W. Va. Code § 33-14-14.

[13] Forty-five states and the District of Columbia have enacted some version of a slayer statute. *See* Ala. Code § 43-8-253; Alaska Stat. § 13.12.803; Ariz. Rev. Stat. § 14-2803; Ark. Code Ann. § 28-11-204; Cal. Prob. Code § 250-52; Colo. Rev. Stat. § 15-11-803; Conn. Gen. Stat. § 45a-447; Del. Code Ann. tit. 12, § 2322; D.C. Code Ann. § 19-320; Fla. Stat. § 732.802; Ga. Code Ann. §§ 53-4-6, 33-25-13; Haw. Rev. Stat. § 560:2-803; Idaho Code § 15-2-803; 755 Ill. Comp. Stat. § 5/2-6; Ind. Code § 29-1-2-12.1; Iowa Code § 633.535; Kans. Stat. Ann. § 59-513; Ky. Rev. Stat. Ann. § 381.280; La. Rev. Stat. Ann. § 22:613(D); Me. Rev. Stat. Ann. tit. 18-A, § 2-803; Mich. Stat. Ann. § 27.12803; Minn. Stat. § 524.2-803; Miss. Code Ann. §§ 91-1-25, 91-5-33; Mont. Code Ann. § 72-2-813; Neb. Rev. Stat. § 30-2354; Nev. Rev. Stat. §§ 41B.200-.420; N.J. Stat. Ann. §§ 3B:7-1 to 7-5; N.M. Stat. Ann. § 45-2-803; N.C. Gen. Stat. §§ 31A-3 to -11; N.D. Cent. Code § 30.1-10-03; Ohio Rev. Code Ann. § 2105.19; Okla. Stat. tit. 84, § 231; Or. Rev. Stat. §§ 112.455 to .555; 20 Pa. Cons. Stat. §§ 8801-15; R.I. Gen. Laws §§ 33-1.1-1 to -16; S.C. Code Ann. § 62-2-803; S.D. Codified Laws § 29A-2-803; Tenn. Code Ann. § 31-1-106; Tex. Prob. Code Ann. § 41(D); Utah Code Ann. § 75-2-803; Vt. Stat. Ann. tit. 14, § 551(6); Va. Code Ann. § 55-401 to -415; Wash. Rev. Code §§ 11.84.010-.900; W. Va. Code § 42-4-2; Wis. Stat. § 854.14; Wyo. Stat. Ann. § 2-14-101. Three states – Maryland, Missouri, and New York – reach the same result by common law. See *Price* v. *Hitaffer*, 165 A. 470, 474 (Md. 1933); *Perry* v. *Strawbridge*, 108 S.W. 641, 648 (Mo. 1908); *Riggs* v. *Palmer*, 22 N.E. 188, 190 (N.Y. 1889). A fourth state, Massachusetts, has applied the slayer rule to insurance policies, but not to wills. *Slocum* v. *Metropolitan Life Ins. Co.*, 139 N.E. 816, 818 (Mass. 1923).

[14] By 1974, when Congress enacted ERISA, at least 10 states had enacted slayer statutes applicable to insurance proceeds. See, *e.g.*, D.C. Code Ann. § 19-320 (enacted 1965); Idaho Code § 15-2-803 (originally enacted 1971); Ky. Rev. Stat. Ann. § 381.280 (originally enacted 1940); N.M. Stat. Ann. § 45-2-803 (as in effect in 1953); N.C. Gen. Stat. §§ 31A-3 to -11 (originally enacted 1961); Okla. Stat. tit. 84, § 231 (originally enacted 1915); Or. Rev. Stat. §§ 112.455-.555 (originally enacted 1917); Tex. Prob. Code Ann. § 41(D) (originally enacted 1919); W. Va. Code § 42-4-2 (originally enacted 1931); Wyo. Stat. Ann. § 2-14-101 (as in effect in 1970).

[15] *Addison* v. *Metropolitan Life Ins. Co.*, 5 F. Supp. 2d 392 (W.D. Va. 1998); *Curtis* v. *Prudential Ins. Co.*, 839 F. Supp. 491 (E.D. Mich. 1993); *Connecticut Gen. Life Ins. Co.* v. *Cole*, 821 F. Supp. 193 (S.D.N.Y. 1993); *New Orleans Elec. Pension Fund* v. *Newman*, 784 F. Supp. 1233 (E.D. La. 1992); *New Orleans Elec. Pension Fund* v. *Knight*, 779 F. Supp. 845 (E.D. La. 1991); *Mendez-Bellido* v. *Board of Trustees of Div. 1181, A.T.U.*, 709 F. Supp. 329 (E.D.N.Y. 1989).

Indeed, to the extent that administrative burdens are a basis for finding ERISA preemption, there is a far *stronger* basis for invalidating slayer statutes, which vary to a far greater extent than the states' divorce-revocation rules. For example, the statutes establish no fewer than six standards for the kind of killings to which the statutes will apply.[16] Similarly, although many states' slayer statutes provide that in the absence of a conviction the applicability of the statute may be determined in a civil proceeding, the standard to be applied in that proceeding varies substantially from state to state.[17] The slayer statutes also differ in the procedural posture required to establish an individual as a "slayer."[18]

Petitioner ignores the issue of slayer statutes entirely, despite it having been highlighted in respondents' brief in opposition. BIO 10. The Solicitor General discusses the issue, but only in the final footnote on the final page of its brief. U.S. Br. 29 n.19. The federal government admits that the natural consequence of petitioner's argument is that slayer statutes are preempted. The federal government now embraces that position notwithstanding that it is contrary to the consistent view of the federal courts.

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[16] The standards are "felonious[] and intentional[]" (*e.g.*, Alabama, Arizona, California, Hawaii); "willful[]" (Texas); "felonious[]" (Alaska, the District of Columbia); "willful and unlawful" (Idaho, North Carolina, Pennsylvania); "unlawful[] and intentional[]" (Florida, Vermont); and "intentional[] and unjustifiabl[e]" (Illinois, Iowa).

[17] Some states, such as Georgia and Maine, establish a "clear and convincing evidence" standard, while others – including Alabama, Hawaii, and Indiana – require a "preponderance of the evidence."

[18] States such as Alabama specify only that a "final judgment" is required, while others – such as Alaska, Arizona, and Hawaii – indicate that the statute will apply only "[a]fter all right to appeal has been exhausted." In Illinois, a civil proceeding to establish an individual as a "slayer" for purposes of the statute may be brought to trial only after "any criminal proceeding has been finally determined by the trial court or, in the event no criminal charge has been brought, * * * one year after the date of death."

Perhaps recognizing the implausible position into which petitioner's preemption theory has forced it, the federal government suggests that it "might reasonably be argued" that the slayer rule, although not the divorce-revocation rule, is embodied in federal common law. But the government's argument makes no sense because it explicitly rests on two totally contradictory premises: that the slayer rule (a) involves a "truly unusual circumstance[] unlikely to have been contemplated by Congress or the drafters of ERISA plans," yet should be accepted as federal common law because (b) it "reflect[s] a recognized background principle of the law * * * implicit in ERISA and the plans governed by it." U.S. Br. 29 & n.18. Furthermore, Congress gave no more indication of a specific intent to preserve slayer statutes than it did regarding divorce-revocation laws. Both classes of state law have pre-ERISA roots, both involve the traditional state-law area of beneficiary designations, and Congress gave no indication in the statute or legislative history that it intended to preempt either of them. The government's attempt to distinguish these two types of laws thus makes no sense, and they would survive or fail together under ERISA preemption analysis.[19]

Second, the states' traditional regulation of beneficiary payments is further demonstrated by the Uniform Simultaneous Death Act. Washington's version of the Act provides that in the case of simultaneous death, unless the plan otherwise specifies, benefits are to be paid as if the beneficiary prede-

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[19] The Solicitor General's argument is also wrong because, as we discuss further below, cases in which it is appropriate to create independent federal common law are "few and restricted." *O'Melveny & Myers* v. *FDIC*, 512 U.S. 79, 87 (1994). Instead, courts should "adopt the readymade body of state law as the federal rule of decision until Congress strikes a different accommodation." *United States* v. *Kimbell Foods*, 440 U.S. 715, 740 (1979). In particular, the federal government fails to explain how "federal common law" would resolve all of the issues on which state slayer statutes vary, such as the kinds of killings that would disentitle a spouse to benefits and the appropriate standard of proof.

ceased the participant. RCW 11.05.040, 48.18.390. Similar provisions, most predating ERISA, have been enacted in every state, the District of Columbia, and the U.S. Virgin Islands.[20] Yet although such statutes both determine who will receive plan benefits and impose varying requirements on the payment of benefits by ERISA plans – including particularly in their determination of what constitutes a "simultaneous" death – the courts have not held that simultaneous death statutes are preempted by ERISA. *E.g.*, *McKinnon* v. *Teachers Ins. & Annuity Ass'n*, No. 89-C-3363, 1989 U.S. Dist. LEXIS 4568, at *3 (N.D. Ill. Apr. 26, 1989) (deriding any such suggestion as "extraordinary").

Third, there are numerous other state background laws that, at a minimum, provide default rules for interpreting beneficiary designations. Thus, state law defines basic con-

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[20] For states following essentially the same rule as Washington, see Ala. Code § 43-7-5; Ariz. Rev. Stat. § 20-1127; Ark. Code Ann. § 28-10-105; Cal. Prob. Code § 224; Colo. Rev. Stat. § 15-11-712(5); Conn. Gen. Stat. § 45a-440(d); Del. Code Ann. tit. 12, § 704; D.C. Code Ann. § 19-504; Fla. Stat. § 732.601(4); Ga. Code Ann. § 33-24-42; Idaho Code § 15-2-613(c); 755 Ill. Comp. Stat. § 5/3-1(d); Ind. Code § 29-2-14-4; Iowa Code § 633.526; La. Rev. Stat. Ann. § 22:645; Me. Rev. Stat. Ann. tit. 18, § 2-805(E); Md. Code Ann., Cts. & Jud. Proc. § 10-804; Mass. Ann. Laws ch. 190A, § 4; Minn. Stat. § 524.2-702(4); Miss. Code Ann. § 91-3-11; Mo. Rev. Stat. § 471.040; Neb. Rev. Stat. § 30-124; Nev. Rev. Stat. § 135.050; N.J. Stat. Ann. § 3B:6-5; N.Y. Est. Powers & Trusts Law § 2-1.6(d); N.C. Gen. Stat. § 28A-24-4; Okla. Stat. tit. 58, §1005; 20 Pa. Cons. Stat. § 8504; R.I. Gen. Laws § 33-2-5; S.C. Code Ann. § 62-1-505; Tenn. Code Ann. § 31-3-105; Vt. Stat. Ann. tit. 14, § 624; V.I. Code Ann. § 88(d); W. Va. Code § 42-5-4; Wyo. Stat. Ann. § 2-13-106.

Other states apply a distinct rule that any death within 120 hours is "simultaneous." See Alaska Stat. § 13.12.702(b); Haw. Rev. Stat. § 560:2-702(b); Kans. Stat. Ann. § 58-710; Ky. Rev. Stat. Ann. § 397.1003; Mich. Stat. Ann. § 27.12702; Mont. Code Ann. § 72-2-712(2); N.H. Rev. Stat. Ann. § 563:2; N.M. Stat. Ann. § 45-2-702; N.D. Cent. Code § 30.1-09.1-02; 1999 Or. Laws 131; S.D. Codified Laws § 29A-2-702; Tex. Prob. Code Ann. § 47(E); Utah Code Ann. §§ 75-2-702, 31A-22-415; Va. Code Ann. § 64.1-104.3; Wis. Stat. § 854.03(4).

cepts such as "child," "spouse," "death," and other terms commonly used in benefits contracts but infrequently defined by the contracts themselves. And, as to the designation forms themselves, state law governs issues such as forgery, duress, and capacity. There are also questions of incompetence, youth, guardianship, and many other considerations under state law that can affect designations. It is absurd to suggest that as to all of these issues ERISA plans are an island unto themselves, immune from generally applicable state law and ruled instead at the whimsy of plan administrators.

These numerous examples demonstrate not only that state statutes governing beneficiary designations are of longstanding provenance in a field that Congress did not intend to preempt, but also that petitioner's reading of ERISA would cut a wide swath through multiple statutes of every single state in the country. "The bigger the package of regulation * * * that would fall," under petitioner's view of preemption, "the less likely it is that federal regulation of benefit plans was intended to eliminate state regulation" in the manner alleged. *Travelers*, 514 U.S. at 661. And given preexisting state regulation of these types when ERISA was passed, any preemption theory that would apply to such laws would be all the more "unsettling" and "startling." *Id.* at 665.

B. RCW 11.07.010 Neither Interferes With The Uniform Administration of ERISA Plans Nor "Binds" Plan Administrators To Impermissible Choices.

Contrary to petitioner's assertions, RCW 11.07.010 does not interfere with the uniform administration of ERISA plans or impermissibly "bind" plan administrators' choices.

1. Uniformity for its own sake was not Congress' object in enacting ERISA. Rather, uniformity was simply a means to mitigate for employers some potentially inconsistent burdens that "might lead those employers with existing plans to reduce benefits, and those without such plans to refrain from adopting them." *Fort Halifax*, 482 U.S. at 11.

The numerous exceptions to ERISA preemption, however, illustrate that uniformity is one goal among the many goals animating ERISA. Thus, ERISA plans are subject to diverse state regulations in insurance, banking, securities, and criminal law. 29 U.S.C. §§ 1144(b)(2)(A), (b)(4). And they are subject to all manner of QDROs, which can require payments directly contrary to what ERISA or a plan would otherwise provide.

At bottom, all state laws create some disuniformity, and that is simply the inevitable and desirable result of our federal system. Congressional solicitude for such multifarious state regulations thus sacrifices uniformity and efficiency in order to bolster and confirm the historic presumption against preemption. Such solicitude is not exceptional, but rather confirms the general rule and gives it added strength in certain areas in order to save even conflicting state laws. Where Congress desired application of a uniform rule, it so provided in the specific "provisions" of ERISA, and then further provided that such "provisions" would "supersede" state laws to the contrary. 29 U.S.C. § 1144(a). Thus, while uniformity was *one* partial goal of ERISA, it routinely has yielded to other important goals and should not be given talismanic weight, especially where there is no danger of conflicting laws deterring the adoption or maintenance of benefit plans.

The danger of burdensome conflicts simply does not exist with a law such as RCW 11.07.010. Unlike the laws discussed in *Travelers*, RCW 11.07.010 neither mandates benefits nor requires alternative methods of calculating benefits. See 514 U.S. at 657 (discussing "benefit demanded by New York" in *Shaw* v. *Delta Airlines, Inc.*, 463 U.S. 85 (1983)); 514 U.S. at 657-58 (discussing Pennsylvania law at issue in *FMC Corp.* v. *Holliday*, 498 U.S. 52 (1990), that "required plan providers to calculate benefit levels" based on "expected liability conditions that differ from those" in other states); 514 U.S. at 658 (discussing law in *Allessi* v. *Raybestos-Manhattan, Inc.*, 451 U.S. 504 (1981), that "prevent[ed] plans

from using a method of calculating benefits permitted by federal law"). The prior laws struck down by this Court had a substantive impact on the plans themselves, requiring added or inconsistent benefits and thus directly increasing plan costs.[21] Here, RCW 11.07.010 requires no new benefits, but rather provides a simple default rule regarding who is to receive benefits in an uncertain situation. If anything, the availability of such a default rule – not provided by ERISA itself – will *reduce* administrative burdens.

Any notion that beneficiary designations have some special need for uniformity is quite mistaken. As noted above, *supra* at 20, 22-25, 26-31, such designations fall within areas traditionally regulated by state law and, under petitioner's view, federal courts would now have to develop common law in numerous traditionally state-law areas such as marriage, divorce, death, paternity, bastardy, estate law, and even fundamental contract law. Congress cannot be presumed to have left plans to their own devices in these important areas, and where ERISA's comprehensive scheme has nothing to say about them, "matters left unaddressed in such a scheme are presumably left subject to the disposition provided by state law." *O'Melveny & Myers* v. *FDIC*, 512 U.S. 79, 85 (1994).

This Court's decision in *Fort Halifax*, upon which petitioner relies, Pet. Br. 13, 18, is not to the contrary. Although *Fort Halifax* explains that plans must determine beneficiary eligibility, 482 U.S. at 9, the case was not about beneficiaries at all. Indeed, *Fort Halifax* actually *upheld* a state law that imposed a far more burdensome requirement than RCW 11.07.010 – the obligation to pay a severance benefit. While the Court discussed the various aspects of plan administration, its preemption analysis focused on the purpose of

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[21] And in *Pegram* v. *Herdrich*, -- U.S. --, 120 S. Ct. 2143, 2158 (2000), this Court recently rejected a bid to establish uniform federal malpractice standards, holding that "ERISA was not enacted *** in order to federalize malpractice litigation in the name of fiduciary duty for any other reason."

"'eliminating the threat of conflicting or inconsistent State and local regulation of employee benefit plans.'" 482 U.S. at 9 (quoting 120 CONG. REC. 29933 (1974) (statement of Sen. Williams)). There was no conflict in that case and there is none here. Although plan administrators inevitably must determine who to pay, the mere existence of that task does not support preemption of background state law on matters regarding which ERISA has nothing to say.[22]

RCW 11.07.010 also does not "bind" plan administrators to any choice in the *Travelers* sense. Rather, it only sets up a rule that applies to family law situations not anticipated or addressed by ERISA, by the plan, or by the participant. If anyone anticipates or addresses the issue, state law defers to that pre-existing resolution. Such free and unburdened choice, with none of the adverse consequences of the choices in *Dillingham* or *Travelers*, hardly "binds" plan administrators to a particular choice.

This Court's decision in *Mackey* likewise demonstrates that the default rule in this case does not impermissibly bind ERISA plans to particular choices. In *Mackey*, this Court held that Georgia's garnishment statute was not preempted as it applied to "ERISA welfare benefit plans, even when those mechanisms prevent plan participants from receiving their benefits." 486 U.S. at 831-32. Petitioner, addressing *Mackey* in a bare footnote, characterizes the garnishment law as merely a "procedural mechanism[] for satisfying money judgments." Pet. Br. at 15 n.5 (emphasis deleted). But the garnishment order in *Mackey* controlled benefit payments far more than does RCW 11.07.010, specifying a third-party nonbeneficiary to receive those payments. 486 U.S. at 831. RCW 11.07.010, by contrast, leaves the determination of subsequent beneficiaries entirely up to the plan. And the statute

[22] In *Fort Halifax*, as here, the statute only set a default rule – state law imposed no obligation if the employee was "covered by a contract that deals with the issue of severance pay." 482 U.S at 5.

in this case also is no less "procedural" than the law in *Mackey* in that it merely establishes default procedures for interpreting otherwise-ambiguous beneficiary designations.

We now address each of petitioners' specific arguments regarding the disuniformity or burden allegedly created by RCW 11.07.010.

2. Donna is not correct in asserting that RCW 11.07.010 creates an impermissible burden on plans by requiring them to determine the marital status of plan participants. Two ERISA provisions already require the identical inquiry, demonstrating both that Washington law imposes no new administrative requirement and also that Congress concluded that an inquiry into participants' marital status would not unduly burden ERISA plans. First, before disbursing benefits, ERISA plan administrators must inquire into the marital status of a participant in order to determine whether to pay a surviving spouse annuity. 29 U.S.C. § 1055(a). Second, administrators must inquire whether a divorce-related QDRO exists. *Id.* § 1056(d)(3)(F); *Boggs*, 520 U.S. at 846. Washington state law requires no more.

In addition, before disbursing death benefits, plan administrators must secure formal proof of death in the form of a copy of the participant's death certificate, which in Washington (and almost certainly in all other states as well) specifically states whether the decedent left a surviving spouse. Resp. Lodging, Exh. 1. The plan need not make further inquiries. It is presumably for that reason that in disbursing the life-insurance benefits to Donna, Aetna already knew of her divorce from David, expressly referring to him as her "ex-spouse." JA 29.

Finally, in the rare instance that a plan administrator cannot determine a participant's marital status, neither ERISA nor Washington law subjects the plan to liability. Washington law immunizes plans from liability unless they had detailed knowledge of the dissolution of the participant's mar-

riage in advance of distributing benefits. RCW 11.07.010(3)(a), (d). And, in case of doubt, under RCW 11.07.010 and ERISA, plans can simply require that the competing claimants resolve their dispute in a court of proper jurisdiction, which will have the responsibility of determining the proper recipient. *Id.* 11.07.010(3)(b)(2)(i).

3. Donna also errs in asserting that ERISA plans will be impermissibly burdened because they will have to determine each state's rule regarding the treatment of beneficiary designations upon divorce or, relatedly, will be exposed to the risk of "double liability" due to conflicting state requirements.

The minor variations in state statutes identified by Donna and her *amici* do not indicate any significant differences. First, there is no substantive difference between those states that upon divorce treat the former spouse as if he or she had "disclaimed" the benefits and those that treat the former spouse as if he or she "predeceased" the participant. Under either formulation the benefits will be paid to the alternate beneficiary specified by the plans. Second, although state laws adopting UPC § 2-804 contain an express provision stating that the statute is not effective insofar as it is preempted while others do not, the distinction is meaningless because a finding of preemption *automatically* makes the relevant statutory provision inoperative.[23]

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[23] The other purported examples of inter-state variations cited by petitioner in a footnote, Pet. Br. 20 n.8, are basically imagined. Some states have not yet extended the divorce-revocation rule to all nonprobate assets, such as the example cited by petitioner, 760 Ill. Comp. Stat. 35/1, which applies only to trusts; but, as we explain in the text, that is not a basis for finding preemption. No state applies the revocation rule if "the beneficiary designation was made after the divorce." Pet. Br. 20 n.8. The states likewise uniformly do not apply the revocation rule "if the divorce decree specifically says otherwise," *id.*; only the Missouri statute does not address the issue expressly, but it is exceedingly unlikely that a court would apply the revocation rule despite the explicit, contrary intent of the participant. The same is true of states (of which there are only three) that do not explicitly state that the divorce-revocation rule does not apply if the

Amicus Western Conference of Teamsters also is not correct that preemption should arise because many states have not yet enacted statutes similar to RCW 11.07.010, such that in some jurisdictions but not others spousal designations remain effective after divorce. If this Court were to find preemption on the ground of interstate variation, then the development of state law would be frozen in its tracks because it is not reasonable to expect (and the Constitution does not contemplate) that all the states will act with identical alacrity. Variations among the states can be expected to resolve themselves with reasonable speed. Although the Teamsters are correct that the Uniform Probate Code itself was "designed years ago," WCT Br. 7, that argument is misleading: the provision in question here, Section 2-804, was not adopted until 1990. Since then, as discussed above, eighteen states have enacted a version of Section 2-804 or an equivalent statute. The rate at which states have enacted such statutes compares very favorably with the process by which states enacted revocation-by-divorce statutes applicable to wills.[24] Particularly because divorce-revocation statutes do not impose any substantial burdens on plans, see *supra* at 11-13, 32-36, that some states do not have such statutes is not a basis for finding preemption.

To the extent that state rules do vary, Donna's concern that plans will be subject to conflicting obligations is seriously overstated. Any conflict of laws issues created by di-

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participant's designation states to the contrary. Petitioner's two remaining examples involve rare factual scenarios that pose no real obstacle to plan administration. Mont. Code Ann. § 72-2-814 (applicable when participant names *relative* of spouse as beneficiary); Ohio Rev. Code Ann. § 1339.63 (inapplicable when divorced spouses remarry each other).

[24] See Mark Davis, Note, *Life Insurance Beneficiaries and Divorce*, 65 TEX. L. REV. 635, 650-51 (1987) (as of 1928, only two states had enacted a revocation-by-divorce statute applicable to wills, but that by 1960 14 states had enacted such statutes, 29 states by 1975, and 44 states by 1985). As discussed above, almost every state now has such a statute.

vorce-revocation statutes are not unique in any way. Plans can and do resolve them like any other businesses under settled legal principles. And, of course, such potential conflicts can always be avoided *ex ante* with the stroke of a pen – by having the plan opt out and set its own uniform rule regarding divorce.[25]

Assuming that a circumstance arises in which a plan does not know which state's law to follow or is subject to conflicting obligations as a result of inconsistent state laws, both ERISA and Washington law adopt the same solution: the plan can leave the matter to be resolved by the courts as between the conflicting claimants. RCW 11.07.010(3)(b)(2)(i). That is precisely what has happened in this case with respect to the pension benefits, which Boeing has not distributed while Donna and the children resolve their dispute.

To the extent that Donna relies on the argument that preemption could arise from the "burden" on a plan to determine what state law actually provides, that theory is extraordinary. Taken to its logical conclusion, it would mean that *every* state law is preempted because ERISA plans cannot be put to the burden of understanding the statutes to which they are subject. Certainly, if such an argument had merit, it would have been sufficient to invalidate the state taxing schemes at issue in *Travelers* and *DeBuono*.

Nor does Donna's argument have any practical force. Plans must already be familiar with the far greater vagaries of state insurance law, all of which is exempt from ERISA preemption. 29 U.S.C. § 1144(b)(2)(A). And respondents collected above several other areas in which states have taken varying approaches to the treatment of plan designations, yet the courts consistently recognize that such statutes are within the field of traditional state regulation that Congress did not intend to preempt. See *supra* at 26-31. Plans track these varying state requirements without difficulty because the law of ERISA, perhaps more than any other field, is the subject of numerous reporter systems and regularly updated treatises.

[25] To the extent that Donna is correct in asserting that administrators have a superseding legal obligation to follow the plan's text, see *infra* at 45-46, the plan need only announce what state law it will follow or simply opt out of these statutes entirely and adopt whatever rule it chooses. The pension plan in this case, for example, expressly states that it will be governed by Washington law. Resp. Lodging, Exh. 5, at 17-3. Alternatively, this Court could announce the governing conflict of law rule. Either approach is preferable to simply invalidating the states' laws *in toto*.

Furthermore, for small plans that operate in a single state, and are necessarily familiar with that state's laws, most participants will be married or divorced within that jurisdiction. Larger plans not only have access to still greater legal resources, but also *already* must be aware of statutes such as RCW 11.07.010 because they administer a number of assets that do not qualify for ERISA preemption. These assets can be quite extensive, including so-called "top-hat plans," excess benefits plans, deferred compensation plans, and unpaid but owing salary and bonuses in the case of sudden or unexpected death. For each, an employer's human resources department will have to follow state law, and hence having a different rule for ERISA designations merely creates, rather than alleviates, disuniformity within a single company.

C. Application Of RCW 11.07.010 Does Not Conflict With ERISA Provisions Regarding Beneficiaries and The Alienation Of Benefits.

Petitioner's next argument is that RCW 11.07.010 conflicts with ERISA provisions imposing duties on plans vis-à-vis beneficiaries and, relatedly, constitutes a prohibited "alienation" of benefits from a beneficiary to a third party.

1. Petitioner is principally wrong because she misstates how RCW 11.07.010 operates. In those instances that the statute applies – *i.e.*, when the plan has not opted out of compliance and when the participant has not redesignated his or her spouse – RCW 11.07.010 provides that the designation of a spouse is ineffective upon divorce and that entitlement to

benefits is determined *under the provisions of the plan.* Specifically, the statute triggers the plan's alternate beneficiary provisions by deeming the former spouse to have predeceased the plan participant. RCW 11.07.010(2)(a).

In this case, David designated Donna as the beneficiary of his pension plan. Upon their divorce, the designation became ineffective and Donna was deemed to have predeceased David. Petitioner attempts to suggest that it was the *statute* rather than the *plan* that determined respondents' entitlement to the benefits; that is wrong. The pension plan SPD provides that when a named beneficiary predeceases a participant, and there is no surviving spouse, benefits pass to the participant's children, JA 40 – here, to respondents. If the plan had named someone else as the alternate beneficiary – for example, the participant's most recent former spouse – that person, rather than the children, would have been entitled to the benefits.

Under the life insurance plan, the children similarly are entitled to benefits, whether as alternate beneficiaries or through David as the plan participant. Unlike the pension plan, the life insurance SPD does not set out an alternate beneficiary scheme. It is extraordinarily unlikely that the life-insurance plan does not have such a scheme, which is required by both ERISA and Washington state insurance law. The alternate beneficiary scheme presumably is included in the text of the plan itself. But the plan is not in the record, Boeing has refused to provide it, and Donna's counsel have refused to request it.

Given the state of the record, the state courts operated on the premise that the life insurance plan unlawfully lacked a provision governing alternate beneficiaries and held that, upon divorce, entitlement to the benefits should pass to the plan participant – *i.e.*, to David. Pet. App. 34a (Washington Court of Appeals decision). When David subsequently died, the benefits became part of his estate and became the property of respondents as his statutory heirs. *Id.*

2. RCW 11.07.010 therefore does not result in the payment of benefits to persons other than plan beneficiaries or participants. Donna's claim that the only "beneficiary" is the person named by the plan participant on a designation form is simply not correct. ERISA defines "beneficiary" as "a person designated by a participant, *or by the terms of an employee benefit plan*, who is *or may become* entitled to a benefit thereunder." 29 U.S.C. § 1002(8) (emphasis added).[26] Here, the children plainly fit that definition because the pension plan expressly provides that they "may become entitled" to benefits in a variety of circumstances – *i.e.*, if there is no surviving spouse and the named beneficiary predeceases the participant, or the beneficiary designation is "invalid," or the participant fails to make a designation at all. JA 40.

Although it is very likely that the life insurance plan provides a similar alternate beneficiary scheme, there is no conflict with ERISA even if it does not. Under the state courts' holding, the life insurance benefits passed to David as the plan participant. ERISA plans owe, if anything, a *superior* duty to their participants (who own the assets in question, after all) than to named beneficiaries. The children became entitled to the benefits only because David died intestate and they are his statutory heirs. Pet. App. 34a-35a.

3. For the same reasons, RCW 11.07.010 does not conflict with ERISA's "anti-alienation" provision, which prohibits an arrangement "whereby a party acquires from a participant or beneficiary a right or interest enforceable against the plan in, or to, all or any part of a plan benefit payment which is, or may become, payable to the participant or beneficiary." 26 C.F.R. § 1.401(a)-13(c)(1)(ii).[27] Under RCW 11.07.010,

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[26] The Solicitor General argues to the contrary only by repeatedly omitting the critical "or may become" clause of the statute. U.S. Br. 6, 7, 21.

[27] Dictionary definitions confirm this understanding. "Alienate" is defined as "[t]o transfer or convey (property or a property right) to another," "alienation" as "[c]onveyance or transfer of property to another <alienation

the children do not acquire any right to benefits "from" the named beneficiary. Again, the statute simply renders the named designation inoperative and leaves it to the plan to determine who will receive the benefits.

On Donna's alternate reading, the anti-alienation provision bars any circumstance in which the beneficiary does not receive benefits because the benefits will eventually be paid to someone else. Not only does that reading ignore the requirement that benefits be received "from" the participant or beneficiary, but it would also produce ridiculous results. It would prohibit a participant from canceling a designation or naming a new beneficiary. It would also render a divorce a prohibited alienation because the divorce terminates the ex-spouse's right to the statute's guaranteed spousal annuity. 29 U.S.C. § 1056(d)(3)(F)(i) ("the former spouse of a participant shall be treated as a surviving spouse of such participant for purposes of" 29 U.S.C. § 1055 only to "the extent provided in any qualified domestic relations order").[28]

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of one's estate>," and "assignment" as "[t]he transfer of rights or property." BLACK'S LAW DICTIONARY 73, 115 (7th ed. 1999).

[28] The precedents cited by petitioner, Pet. Br. 37, only confirm respondents' view. In *Boggs*, Louisiana community property law purported to take a portion of a guaranteed spousal annuity from the participant's spouse and assign it specifically to the former spouse as part of her community property. 520 U.S. at 844. In *Guidry* v. *Sheet Metal Workers National Pension Fund*, 493 U.S. 365 (1990), the constructive trust remedy at issue presumed that "the benefits had not been forfeited, but that a constructive trust should be imposed so that the benefits would be paid to the Union rather than to petitioner." 493 U.S. at 369. The union's claim to the money thus existed only derivatively through petitioner's prior right, and thus was not meaningfully different from a garnishment. 493 U.S. at 372. Finally, in *Patterson* v. *Shumate*, 504 U.S. 753 (1992), the issue was whether pension benefits could be included in a bankruptcy estate for transfer to creditors who had no independent claim of right, but necessarily claimed only as far as the rights of the debtor. 504 U.S. at 755. These cases demonstrate that alienation has consistently been understood to involve the transfer to third parties of a person's continuing interest in a pension plan, and not the loss of an interest that results in the ripening of a subsequent and nonderivative claim of right by other beneficiaries.

Nor does Donna's reading bear any relationship to the purpose of the anti-alienation provision: avoiding spendthrifts. *Guidry* v. *Sheet Metal Workers Nat'l Pension Fund*, 493 U.S. 365, 376 (1990). RCW 11.07.010 does not transfer rights to benefits from a beneficiary to a specific alternate recipient, as if to pay a debt or as a security interest. Indeed, any expansive reading of the anti-alienation provision in these circumstances would be inappropriate because (in contrast to a guaranteed spousal annuity) Donna never had a vested right to benefits under the plans.[29]

4. There is, in fact, a strong argument based on both the designation form filled out by David and Washington community property law that, upon her divorce from David, Donna ceased to be a beneficiary at all.[30] Under ERISA, named beneficiaries are "persons." 29 U.S.C. § 1002(8). The statute defines "person" differently than "individual," incorporating legal attributes beyond mere physical existence. Thus, "'person' means an individual, partnership, joint venture, corporation, mutual company, joint-stock company, trust, estate, unincorporated organization, association, or employee organization." *Id.* § 1002(9). For example, the designation of "John Doe, as trustee for William Smith" confers benefits upon John Doe only in his legal status as the trustee. Cf. *McKinnon* v. *Blue Cross and Blue Shield of Ala.*, 935 F.2d 1187, 1191-92 (CA11 1991) (plaintiff was beneficiary only

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[29] In addition to the reasons discussed in the text, ERISA's anti-alienation provision is inapposite here because the judgment in this case is or will be embodied on remand in a QDRO (which is an exception to the anti-alienation rule, see 29 U.S.C. § 1056(d)(3)) and because the anti-alienation rule does not apply at all to life insurance benefits, see *id.* § 1056(d)(1); *Mackey*, 486 U.S. at 836.

[30] The children have never stipulated to the contrary, having agreed below only that David placed Donna's name on the designation form. JA 22.

"in her capacity as executrix"; "as an individual, [she was] neither a participant nor a beneficiary of the plan").

For the life insurance plan, David designated "Donna R. Egelhoff Wife" as his beneficiary. See Resp. Lodging, Exh. 3. But at the point their divorce became effective, there was no such person as "Donna R. Egelhoff *Wife*"; the designated person had definitionally ceased to exist. Cf. 29 U.S.C. § 1056(d)(3)(F) (distinguishing "former spouse" from "spouse" and "surviving spouse" except where expressly provided for in a QDRO). Similarly, Washington treated David and Donna's marital "community" as a distinct entity. Marriage created a new legal person – "Donna as spouse" – and it was that person whom David named as beneficiary. Upon divorce, however, the marital community was terminated and with it "Donna as spouse" ceased to exist, replaced by a legal "person" with materially different rights and duties.

5. If anything, as between the parties to this case, Congress intended to protect the children rather than Donna. Because respondents are beneficiaries under ERISA just as much as Donna, there can be no conflict with the ERISA provisions on which Donna relies, which express only a concern with beneficiaries as a *class*, not with named beneficiaries (such as Donna) in supposed preference to alternate beneficiaries (such as the children). 29 U.S.C. §§ 1001(b), 1104(a)(1). In other words, ERISA's interest in Donna is no different than if she had been selected by David because she was his mail carrier, his night-nurse, or the president of a multinational organization picked at random from the phone book. ERISA expresses no policy concerning disputes between beneficiaries. See *Emard* v. *Hughes Aircraft Co.*, 153 F.3d 949, 957 (CA9 1998) ("No ERISA provision expressly governs disputes between claimants to insurance proceeds."), cert. denied, 525 U.S. 1122 (1999).; see also *Equitable Life Assur. Soc'y* v. *Crysler*, 66 F.3d 944, 948 (CA8 1995) (citing cases). It certainly makes no difference that the children had only a contingent right to the benefits. For at the relevant

time – the date of the divorce – Donna's interest was contingent as well. She had to survive David without him remarrying (which would have shifted the pension benefits to the new spouse) or naming a new beneficiary.

This case is accordingly significantly different from *Boggs*, in which ERISA had a distinct substantive preference that the surviving spouse receive a guaranteed annuity. On that basis, *Boggs* read the QDRO protections for spouses and children to exclude other means of extinguishing the surviving spouse annuity requirement. Neither the plan nor the former participant in *Boggs* could have changed the surviving spouse's benefit status without her express written consent, and consequently it makes sense that this Court read narrowly any exceptions to such a strong and substantive statutory command. Here, by contrast, Donna's status could have been extinguished either by David himself or by a plan provision stating that spousal designations are revoked upon divorce.

Finally, ERISA protects named beneficiaries as a class strictly out of respect for the participant's choice. RCW 11.07.010 furthers Congress' intent by creating a presumption that accords with the intent of participants in the event they divorce. By contrast, as we explained above, Donna's position does nothing more than mock Congress' intent. She seeks the benefits notwithstanding that she gave them up in the divorce and that it would make David "angry," seeking to profit from what she views as his "procrastination" in not changing his designation form. JA 19.

D. RCW 11.07.010 Does Not Conflict With Administrators' Fiduciary Duty To Follow Plan Terms.

Donna fares no better in arguing that RCW 11.07.010 conflicts with the duty of plan administrators under ERISA Section 404(a)(1) to abide by the terms of the plan. 29 U.S.C. § 1104(a)(1)(D). Donna seriously overreads this provision, which merely announces a fiduciary duty, as if it were a preemption provision. She reaches that conclusion only by ap-

plying a critical unstated premise: that Section 404(a)(1) not only creates a fiduciary duty to follow the plan, but also *eliminates* a fiduciary duty to follow the *law*. The result is nothing more than a self-fulfilling prophecy: any law that an ERISA plan is said to violate is thereby automatically preempted because, necessarily, it is inconsistent with the plan.

But, plainly, Congress did not adopt petitioner's implicit premise and did not preempt all laws that are inconsistent with the terms of ERISA plans, thereby delegating the supremacy clause's awesome power to preempt state statutes to private administrators. On Donna's reading, by contrast, even though Congress expressly exempted state insurance law from preemption, 29 U.S.C. § 1144(b)(2)(A), administrators would be free to ignore that body of state law simply by adopting contrary plan provisions. In fact, on Donna's reading, administrators could adopt plan provisions that would supplant not only state law but even *federal* law other than ERISA, including federal anti-discrimination law.[31]

2. Even assuming that petitioner's overbroad reading of the duty to follow the plan were correct, she would not prevail. First and foremost, RCW 11.07.010 expressly avoids any conflict with plan terms because it sets only an easily avoidable, default standard. If the plan states that it is not subject to the divorce-revocation rule, then RCW 11.07.010 does not apply. See RCW 11.07.010(2)(b)(i).

Nor are the terms of the plans otherwise inconsistent with Washington law. The pension plan expressly provides that it

[31] In a footnote, the Solicitor General seems to realize that Donna's argument is untenable, stating that "[w]e do not, however, read Section 404(a)(1) to 'enable employers to avoid *any* state law simply be [sic] referring to that law in [their] ERISA plan.'" U.S. Br. 23 n.13 (alteration and emphasis in original) (citation omitted). But the government says no more, and in particular fails to explain what line divides plan provisions that permissibly preempt state law from those that go too far. Whatever line the Solicitor General would want to draw, it certainly is not found in the text of ERISA.

"shall be construed according to the laws of the State of Washington, except insofar as state law has been preempted by [ERISA]." Resp. Lodging, Exh. 5, at 17-3. Plainly, then, any finding of preemption must rest on the text of ERISA itself, not the plan.

Donna is also wrong in asserting that the plan's terms require the payment of benefits to the named beneficiary. There are several circumstances in which benefits are paid to the alternate beneficiaries, including one particularly relevant here. The pension plan and pension SPD both state that the plan's alternate beneficiary provisions (under which respondents are entitled to benefits) are triggered if the participant's designation is "invalid." Resp. Lodging, Exh. 5, at 17-2 ("If there is no valid designation of a beneficiary * * * the benefits will be paid" to alternate beneficiaries); JA 40 (alternate beneficiary provisions apply if "you have an invalid beneficiary designation"). As a matter of Washington state law, that is precisely the result of David's divorce from Donna – his designation of her was rendered invalid.

Regarding the life insurance benefits, Donna cannot plausibly allege that RCW 11.07.010 conflicts with the plan, which is not in the record. Her counsel do not even have a copy of the plan. Boeing refuses to provide it to respondents' counsel, and Donna's counsel refuse to request it. All that is in the record is the life insurance SPD, which does not address issues relating to governing law, choice of law, or alternate beneficiaries.

3. The fact that critical documents are not in the record constitutes an independent basis for affirmance or dismissing the petition as improvidently granted.[32] Petitioner simply has

[32] If the petition were dismissed, the Court would be free to resolve the question presented by granting certiorari in No. 00-265, *Manning* v. *Hayes* (filed Aug. 16, 2000). The conflict between the Washington Supreme Court's decision in this case and the Fifth Circuit's decision in *Manning*,

not overcome the presumption against preemption because she has not presented proof of the documents on which she principally relies. Thus, Donna contends that RCW 11.07.010 conflicts with plan terms but has not proved what the life insurance plan provides; the Washington courts therefore operated on the doubtful assumption that the life insurance plan unlawfully lacks any alternate beneficiary scheme. For all this Court knows, the life insurance plan may state that it *is* subject to RCW 11.07.010. Although the SPDs are in the record, they are only summaries of the plans themselves and do not address numerous issues. Donna also contends that the statute conflicts with David's designation of her, but there is an open question whether the designation specifies "Donna Egelhoff *Wife*."

The failure to provide any proof on these critical issues is particularly extraordinary because Donna's counsel refuse to even request the documents from Boeing – which is financing this litigation on her behalf and has filed an *amicus* brief in this Court – so that they may be reviewed by this Court.[33] Petitioner cannot expect this Court to strike down the laws of eighteen sovereign states and announce a rule of preemption that would invalidate several other statutes from every other state, see *supra* at 23, 26-31, with blinders on regarding the actual facts before it.[34]

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212 F.3d 866 (2000), was likely a principal reason the Court granted certiorari here.

[33] There is no non-strategic reason for withholding these documents from respondents. As plan beneficiaries under both the Washington Supreme Court's holding in this case and the terms of the plan, respondents have a statutory *right* to the documents. 29 U.S.C. §§ 1024(b)(2), (4).

[34] These factual uncertainties would, however, be resolved on remand in the trial courts, where respondents would have the power to compel production of the relevant documents. This is a further basis for finding the judgment nonfinal. See *Minnick*, 452 U.S. at 127 (dismissing for lack of finality in part "because of significant ambiguities in the record").

E. The Judgment Should Independently Be Affirmed On The Basis Of Federal Common Law.

Given the gaps in ERISA concerning the validity of beneficiary designations, courts will inevitably have to choose or create law to fill those gaps. Respondents maintain that the appropriate source to fill those gaps is state law. But even if this Court were to favor application of federal law, and hence the creation of a federal common-law rule, the net result ought to be effectively the same: Any such federal common law should look to state law for its content. In particular, this Court should, at a minimum, adopt state statutes governing the impact of divorce on beneficiary designations in those states having such statutes or comparable common-law rules.

As this Court noted in *O'Melveny & Myers*, 512 U.S. at 85, a bare conclusion that "'federal law governs'" includes "federal adoption of state-law rules," and hence in the absence of a conflict, abstract determinations regarding federal preemption of a given field are somewhat beside the point. The issue here, as in *O'Melveny*, is whether the state-law rule of decision is to be applied and, if it is, "it is of only theoretical interest whether the basis for that application is [Washington's] own sovereign power or federal adoption of [Washington's] disposition." *Id.* As there is no conflict between state laws such as RCW 11.07.010 and ERISA, it is not surprising that a number of courts that broadly construed ERISA preemption nonetheless reached the same substantive result through application of federal common law. See, *e.g.*, *Brandon* v. *Travelers Ins. Co.*, 18 F.3d 1321, 1326 (CA5 1994) (following approach of Seventh Circuit in "adopt[ing] state law through federal common law and determin[ing] that the provision in the divorce decree divesting the wife of her rights to the benefits in question, should be enforced"), cert. denied, 513 U.S. 1081 (1995). While respondents believe that this roundabout path is unnecessary, and that state law may apply of its own force, the incorporation of state law via

federal common law still remains an option for this Court to reach the appropriate result from a different direction.[35]

CONCLUSION

For the foregoing reasons, the judgment of the Washington Supreme Court should be affirmed.

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Dated: September 18, 2000.

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[35] Even if the Court were to hold RCW 11.07.010 preempted, the appropriate course would not be to reverse but instead to vacate and remand. The state courts have not yet addressed respondents' argument that petitioner "waived" her rights to benefits. Accord U.S. Br. 4 n.1. In addition, given that David died so soon after the divorce, the state courts may conclude that the children are entitled to the value of the benefits under the state common law rule that predated enactment of RCW 11.07.010. See *Aetna Life Ins. Co.* v. *Wadsworth*, 689 P.2d 46 (Wash. 1984).

APPENDIX

REVISED CODE OF WASHINGTON

TITLE 11. PROBATE AND TRUST LAW

CHAPTER 11.07. NONPROBATE ASSETS ON DISSOLUTION OR INVALIDATION OF MARRIAGE

11.07.010. Nonprobate assets on dissolution or invalidation of marriage

(1) This section applies to all nonprobate assets, wherever situated, held at the time of entry by a superior court of this state of a decree of dissolution of marriage or a declaration of invalidity.

(2)(a) If a marriage is dissolved or invalidated, a provision made prior to that event that relates to the payment or transfer at death of the decedent's interest in a nonprobate asset in favor of or granting an interest or power to the decedent's former spouse is revoked. A provision affected by this section must be interpreted, and the nonprobate asset affected passes, as if the former spouse failed to survive the decedent, having died at the time of entry of the decree of dissolution or declaration of invalidity.

(b) This subsection does not apply if and to the extent that:

(i) The instrument governing disposition of the nonprobate asset expressly provides otherwise;

(ii) The decree of dissolution or declaration of invalidity requires that the decedent maintain a nonprobate asset for the benefit of a former spouse or children of the marriage, payable on the decedent's death either outright or in trust, and other nonprobate assets of the decedent fulfilling such a requirement for the benefit of the former spouse or children of the marriage do not exist at the decedent's death; or

(iii) If not for this subsection, the decedent could not have effected the revocation by unilateral action because of the terms of the decree or declaration, or for any other rea-

son, immediately after the entry of the decree of dissolution or declaration of invalidity.

(3)(a) A payor or other third party in possession or control of a nonprobate asset at the time of the decedent's death is not liable for making a payment or transferring an interest in a nonprobate asset to a decedent's former spouse whose interest in the nonprobate asset is revoked under this section, or for taking another action in reliance on the validity of the instrument governing disposition of the nonprobate asset, before the payor or other third party has actual knowledge of the dissolution or other invalidation of marriage. A payor or other third party is liable for a payment or transfer made or other action taken after the payor or other third party has actual knowledge of a revocation under this section.

(b) This section does not require a payor or other third party to pay or transfer a nonprobate asset to a beneficiary designated in a governing instrument affected by the dissolution or other invalidation of marriage, or to another person claiming an interest in the nonprobate asset, if the payor or third party has actual knowledge of the existence of a dispute between the former spouse and the beneficiaries or other persons concerning rights of ownership of the nonprobate asset as a result of the application of this section among the former spouse and the beneficiaries or among other persons, or if the payor or third party is otherwise uncertain as to who is entitled to the nonprobate asset under this section. In such a case, the payor or third party may, without liability, notify in writing all beneficiaries or other persons claiming an interest in the nonprobate asset of either the existence of the dispute or its uncertainty as to who is entitled to payment or transfer of the nonprobate asset. The payor or third party may also, without liability, refuse to pay or transfer a nonprobate asset in such a circumstance to a beneficiary or other person claiming an interest until the time that either:

(i) All beneficiaries and other interested persons claiming an interest have consented in writing to the payment

or transfer; or

(ii) The payment or transfer is authorized or directed by a court of proper jurisdiction.

(c) Notwithstanding subsections (1) and (2) of this section and (a) and (b) of this subsection, a payor or other third party having actual knowledge of the existence of a dispute between beneficiaries or other persons concerning rights to a nonprobate asset as a result of the application of this section may condition the payment or transfer of the nonprobate asset on execution, in a form and with security acceptable to the payor or other third party, of a bond in an amount that is double the fair market value of the nonprobate asset at the time of the decedent's death or the amount of an adverse claim, whichever is the lesser, or of a similar instrument to provide security to the payor or other third party, indemnifying the payor or other third party for any liability, loss, damage, costs, and expenses for and on account of payment or transfer of the nonprobate asset.

(d) As used in this subsection, "actual knowledge" means, for a payor or other third party in possession or control of the nonprobate asset at or following the decedent's death, written notice to the payor or other third party, or to an officer of a payor or third party in the course of his or her employment, received after the decedent's death and within a time that is sufficient to afford the payor or third party a reasonable opportunity to act upon the knowledge. The notice must identify the nonprobate asset with reasonable specificity. The notice also must be sufficient to inform the payor or other third party of the revocation of the provisions in favor of the decedent's spouse by reason of the dissolution or invalidation of marriage, or to inform the payor or third party of a dispute concerning rights to a nonprobate asset as a result of the application of this section. Receipt of the notice for a period of more than thirty days is presumed to be received within a time that is sufficient to afford the payor or third party a reasonable opportunity to act upon the knowledge, but receipt of

the notice for a period of less than five business days is presumed not to be a sufficient time for these purposes. These presumptions may be rebutted only by clear and convincing evidence to the contrary.

(4)(a) A person who purchases a nonprobate asset from a former spouse or other person, for value and without actual knowledge, or who receives from a former spouse or other person payment or transfer of a nonprobate asset without actual knowledge and in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, property, or benefit nor is liable under this section for the amount of the payment or the value of the nonprobate asset. However, a former spouse or other person who, with actual knowledge, not for value, or not in satisfaction of a legally enforceable obligation, receives payment or transfer of a nonprobate asset to which that person is not entitled under this section is obligated to return the payment or nonprobate asset, or is personally liable for the amount of the payment or value of the nonprobate asset, to the person who is entitled to it under this section.

(b) As used in this subsection, "actual knowledge" means, for a person described in (a) of this subsection who purchases or receives a nonprobate asset from a former spouse or other person, personal knowledge or possession of documents relating to the revocation upon dissolution or invalidation of marriage of provisions relating to the payment or transfer at the decedent's death of the nonprobate asset, received within a time after the decedent's death and before the purchase or receipt that is sufficient to afford the person purchasing or receiving the nonprobate asset reasonable opportunity to act upon the knowledge. Receipt of the personal knowledge or possession of the documents for a period of more than thirty days is presumed to be received within a time that is sufficient to afford the payor or third party a reasonable opportunity to act upon the knowledge, but receipt of the notice for a period of less than five business days is presumed not to be a sufficient time for these purposes. These presumptions may be rebutted only by clear and convincing evidence to the contrary.

(5) As used in this section, "nonprobate asset" means those rights and interests of a person having beneficial ownership of an asset that pass on the person's death under only the following written instruments or arrangements other than the decedent's will:

(a) A payable-on-death provision of a life insurance policy, employee benefit plan, annuity or similar contract, or individual retirement account;

(b) A payable-on-death, trust, or joint with right of survivorship bank account;

(c) A trust of which the person is a grantor and that becomes effective or irrevocable only upon the person's death; or

(d) Transfer on death beneficiary designations of a transfer on death or pay on death security, if such designations are authorized under Washington law.

For the general definition in this title of "nonprobate asset," see RCW 11.02.005(15) and for the definition of "nonprobate asset" relating to testamentary disposition of nonprobate assets, see RCW 11.11.010(7).

(6) This section is remedial in nature and applies as of July 25, 1993, to decrees of dissolution and declarations of invalidity entered after July 24, 1993, and this section applies as of January 1, 1995, to decrees of dissolution and declarations of invalidity entered before July 25, 1993.

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No. 99-1529

IN THE

Supreme Court of the United States

DONNA RAE EGELHOFF,

Petitioner,

v.

SAMANTHA EGELHOFF, A MINOR, BY AND THROUGH HER NATURAL PARENT KATE BREINER, AND DAVID EGELHOFF,

Respondents.

On Writ Of Certiorari
To The Supreme Court Of Washington

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

I. RESPONDENTS' ATTEMPTS TO AVOID A DECISION ON THE MERITS ARE BASELESS

Respondents belatedly identify three purported grounds for avoiding a decision on the merits of the important questions raised in this case. Respondents' objections are entirely without foundation.

First, Respondents contend that the question presented in this case is "entirely academic" because the decision below "does not impose any duties on ERISA plans or create any rights against such plans." Resp. Br. 14, 15.[1] Respondents' contention is nonsensical.

The court below expressly rejected the contention that "[§] 11.07.010 does not apply to ERISA plans," and refused to find ERISA preemption even after making clear that § 11.07.010 "operate[s] upon the beneficiary designation in an ERISA plan." Pet. App. 18a-19a, 21a. Unless reversed by this Court, therefore, the decision below will compel ERISA plans to comply with § 11.07.010, and will subject them to enforcement actions in state court if they fail to do so. The fact that no plan is a party to this case is thus irrelevant, just as it was in *Boggs v. Boggs*, 520 U.S. 833 (1997). *See id.* at 854 ("It does not matter that respondents have sought to enforce their rights only after the retirement benefits have been distributed since their asserted rights are based on the theory that they had an interest in the undistributed pension plan benefits. Their state-law claims are pre-empted.").

Nor is there any significance to the fact that lack of notice may give ERISA plans a limited defense to dam-

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[1] Respondents waived this argument by failing to raise it either in the courts below or in their brief in opposition. SUP. CT. R. 15.2; *Demarest v. Manspeaker*, 498 U.S. 184, 188-189 (1991); *Oklahoma City v. Tuttle*, 471 U.S. 808, 815-816 (1985).

ages claims under § 11.07.010(3). That limited defense is irrelevant in this case: The insurance plan administrator has already settled with Respondents (Resp. Br. 15 n.3) and the pension plan still holds the pension funds at issue here (and indeed, but for the stay issued by Justice O'Connor, would already have been subjected to the enforcement and contempt proceeding initiated by Respondents in the trial court).[2] More fundamentally, Respondents' attempt to divert the focus of this case to the varying damages provisions set forth in § 11.07.010(3) and (4) is wholly unpersuasive. The crucial provision that forms the basis for their claim against Petitioner is subsection 2(a), which purports to revoke ERISA plan beneficiary designations upon divorce and, in so doing, imposes a legal duty directly on ERISA plans.

Second, Respondents contend that Petitioner's preemption challenge is premature and should be rejected because of the purported possibility that "the trial courts on remand from the Washington Supreme Court can and will expressly address the disputed benefits and satisfy the technical requirements for QDROs." Resp. Br. 16. That wholly speculative contention has been waived because it was not raised previously (*see supra* note 1), and in any event is without merit.

As previously explained (Pet. Br. 23), ERISA exempts QDROs from the scope of its preemption provision. Contrary to Respondents' belated musings, however, no QDROs could be entered by the state courts in this case. *Ablamis v. Roper*, 937 F.2d 1450, 1456 (9th Cir. 1991) ("The limited QDRO exception applies only

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[2] *See* No. 99A803 (Apr. 7, 2000). Absent reversal, of course, the decision below would be binding on the pension plan administrator in any enforcement action, both as a matter of *stare decisis* in the Washington courts and by virtue of traditional collateral estoppel principles. RESTATEMENT (SECOND) OF JUDGMENTS § 42 cmt. g & illus. 13 (1982); 18 C. WRIGHT, A. MILLER & E. COOPER, FEDERAL PRACTICE AND PROCEDURE § 4454, at 462-63 (1981).

to 'domestic relations' orders 'made pursuant to a state domestic relations law,' not to 'probate' orders or orders made pursuant to probate law.").

A QDRO must be a "domestic relations order," which ERISA defines as "any judgment, decree, or order . . . which . . . relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant." 29 U.S.C. § 1056(d)(3)(B)(ii). No orders in this case could "relate[] to the provision of child support, alimony payments, or marital property rights" for the simple reason that there are no such rights involved here. Petitioner's entitlement to the ERISA benefits at issue is founded upon her status as the designated beneficiary of the plans, not on alimony or marital property rights; Respondents' contrary claims are based on § 11.07.010(2), not on a child support order or any marital relationship. The only domestic relations order involved in this case—the divorce decree between Petitioner and David Egelhoff—was entered as a final decree in a different case more than six years ago, and concededly does not constitute a QDRO. Respondents' untimely QDRO argument is a red herring.

Third, Respondents claim (Resp. Br. 47) that the presence of summary plan descriptions ("SPDs") rather than the full plan documents in the record provides a "basis for affirmance or dismissing the petition as improvidently granted." Once again, their claim has been waived (*see supra* note 1) and is meritless.

There has never been any dispute in this case about the material terms of the plans. Indeed, Respondents *stipulated* that the record already contains "the relevant provisions of" the pension plan (J.A. 21), and they are also bound by their express admission that "[t]he plans provided that benefits would be distributed upon David's death *to the named beneficiary* or, if the named beneficiary predeceased David, to David's heirs." Br. in Opp. 1 (emphasis added). Nor are Respondents in any

position to dispute, for the first time in the case, Petitioner's status as the sole designated beneficiary of both plans. Resp. Br. 43-44. As the courts below found, Petitioner was "beneficiary of record under both [the] life insurance policy and [the] pension plan," and "remained" so "[a]t the time of [David Egelhoff's] death." Pet. App. 4a; *see id.* at 29a, 30a, 46a, 48a.

Respondents' complaints about the record are also wrong on the merits. The record contains the SPDs, which provide compelling evidence of the pertinent provisions of the plans. ERISA § 102(a), 29 U.S.C. § 1022(a); U.S. Br. 21 n.10; *Chiles v. Ceridian Corp.*, 95 F.3d 1505, 1518-19 (10th Cir. 1996); *Pierce v. Security Trust Life Ins. Co.*, 979 F.2d 23, 27 (4th Cir. 1992); *Hansen v. Continental Ins. Co.*, 940 F.2d 971, 981-82 (5th Cir. 1991); *Heidgerd v. Olin Corp.*, 906 F.2d 903, 907-08 (2d Cir. 1990); *Edwards v. State Farm Mut. Auto. Ins. Co.*, 851 F.2d 134, 136 (6th Cir. 1988). If Respondents were dissatisfied with the state of the record in the trial court, they should have obtained additional documents through discovery and introduced them in an effort to rebut Petitioner's factual showing. Respondents cannot now benefit from their own default merely by suggesting—without a shred of evidence—that they might conceivably gain some wholly speculative and dubious advantage if only the complete plan documents were in the record.[3]

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[3] Respondents' claim that "[t]he record contains uncontradicted, sworn testimony" that David Egelhoff did not want her to receive benefits (Resp. 25) is without merit. In the first place, Petitioner's alleged *post hoc* speculations regarding the hypothetical intentions of the deceased are irrelevant. The plans make clear that a participant's intentions regarding disposition of plan assets are ineffective unless and until expressed in a beneficiary designation form. Moreover, under Washington evidence law, the statements cited by Respondents lack foundation and are inadmissible hearsay. WASH. R. EVID. 602, 802.

II. SECTION 11.07.010 "RELATES TO" AN ERISA PLAN

A. The "Opt Out" Provision Does Not Save Section 11.07.010 From Preemption

Respondents first contend that ERISA does not preempt § 11.07.010 because the divorce-revocation mandate does not apply if "[t]he instrument governing disposition of the nonprobate asset expressly provides otherwise." WASH. REV. CODE § 11.07.010(2)(b)(i). According to Respondents, § 11.07.010 is "strictly optional" and thus does not impose a "cognizable burden" on ERISA plans. Resp. Br. 8, 11-12. Respondents have waived this contention (*see supra* note 1), however, and in any event it reflects a fundamental misapprehension of the nature and scope of ERISA preemption.

ERISA § 514(a) was intended to "establish the regulation of employee welfare benefit plans 'as exclusively a federal concern,'" thereby "avoid[ing] a multiplicity of regulation in order to permit the nationally uniform administration of employee benefit plans." *New York State Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 656, 657 (1995) (citation omitted). Thus, ERISA preempts state laws that "mandat[e] employee benefit structures or their administration." *Id.* at 657-58. As applied to the plans at issue in this case, § 11.07.010 has precisely that forbidden effect: It directly regulates ERISA plans by invalidating the benefit structures and procedures provided for in the plans and substituting a different, state-conceived scheme for determining beneficiaries and paying benefits.

Respondents' assumption that the plans could have opted out of the particular benefit scheme imposed by § 11.07.010 (if they had been aware of it) is thus entirely beside the point. The crucial and incontrovertible fact is that Washington has, by statute, purported to replace these ERISA plans' beneficiary provisions with a different rule that deprives designated beneficiaries of rights they would otherwise enjoy under the terms of the plans.

To say that such a law does not "relate to" an ERISA plan would be absurd.

Far from advancing Respondents' argument, the opt-out provision in fact constitutes yet another impermissible attempt by Washington to regulate the administration of ERISA plans. The opt-out provision requires ERISA plans to "expressly provide[]" that they reject the default divorce-termination rule, and thus imposes on ERISA plans an additional administrative hurdle that must be overcome before they can implement their desired benefit allocation scheme. In effect, § 11.07.010 subjects ERISA plans to a two-tiered state regulatory regime that "dictate[s] the choices[] facing ERISA plans" (*California Div. of Labor Standards Enforcement v. Dillingham Constr., N.A.*, 519 U.S. 316, 334 (1997)): A plan must either amend its plan documents in a manner that satisfies the requirements of Washington's "express[]" opt-out provision, or pay benefits in accordance with Washington's divorce-revocation rule, notwithstanding the plan's contrary benefit-allocation scheme. In either case, § 11.07.010 is imposing state-law administrative requirements that regulate ERISA plans' benefit allocation schemes—precisely the type of state regulation that Congress intended to preempt.

The opt-out provision's inability to save § 11.07.010 from preemption is further demonstrated by the implications of Respondents' contrary argument. If the mere presence of an opt-out provision sufficed to save otherwise impermissible statutes from preemption, ERISA plans would be subjected to the very burdens that Congress sought to eliminate. ERISA plan administrators would have to acquire and maintain a detailed familiarity with the ever-changing benefits regulatory schemes of all 50 states and remain constantly on their guard to adopt plan amendments that satisfied the terms of any newly adopted opt-out provisions in order to avoid the otherwise binding effect of new state substantive regulations. Section 514(a) was intended to avoid the need for

"'the tailoring of plans and employer conduct to the peculiarities of the law of each jurisdiction,'" *Travelers*, 514 U.S. at 656-57 (citation omitted), but Respondents' argument would lead to precisely that impermissible result. The opt-out provision thus cannot save § 11.07.010 from preemption.

B. Section 11.07.010 Mandates Plan Administration And Binds Plans To A Particular Choice Regarding Core ERISA Concerns

Almost in passing, Respondents assert that § 11.07.010 does not mandate plan administration or bind plan administrators to any particular choices, but instead merely "sets up a rule that applies to family law situations not anticipated or addressed by ERISA, by the plan, or by the participant." Resp. Br. 34. To the contrary, the plans at issue here establish a uniform, clear and simple procedure for determining beneficiary status in the circumstances of this case: The plan confers beneficiary status on, and will pay benefits to, the individual listed on the participant's official beneficiary designation form on file with the plan administrator. *See* Pet. Br. 2-3 n.1. By purporting to override that simple rule and substitute a different, state-preferred result, § 11.07.010 clearly mandates plan administration and binds plan administrators to particular choices in an area that lies at the very core of ERISA's concerns—beneficiary status and rights. *See* Pet. Br. 12-17; U.S. Br. 12-17.

Respondents rely on *Mackey v. Lanier Collection Agency & Serv., Inc.*, 486 U.S. 825 (1988), but the state garnishment law at issue there was merely "a 'procedural' mechanism for the enforcement of judgments" and "d[id] not create the rule of decision in any case affixing liability." *Id.* at 835 n.10. That distinction was essential to the Court's decision, and properly so. A law like § 11.07.010 that intrudes directly into matters regulated by ERISA by overriding and replacing an ERISA plan's "rule of decision" for making beneficiary deter-

minations relates to ERISA plans in a direct and substantial way, unlike a general garnishment statute that merely permits the enforcement of money judgments predicated on state laws that have nothing whatsoever to do with ERISA plans. Respondents' argument that § 11.07.010 is "no less 'procedural' than the law in *Mackey*" (Resp. Br. 35) is thus incorrect.

Respondents next argue that § 11.07.010 ought not be preempted because, in their view, Congress did not intend ERISA to preempt state slayer statutes or simultaneous death laws. Respondents' reliance on these other state laws is misplaced. First, Respondents err in contending that state slayer statutes are "functionally indistinguishable" from § 11.07.010. Resp. Br. 26-27. The "Slayer's Rule" has been universally recognized by the common law for more than a century. *See, e.g.*, RESTATEMENT OF RESTITUTION §§ 187, 189 (1937); *Mutual Life Ins. Co. v. Armstrong*, 117 U.S. 591, 600 (1886) ("It would be a reproach to the jurisprudence of the country, if one could recover insurance money payable on the death of a party whose life he had feloniously taken."); *Riggs v. Palmer*, 22 N.E. 188, 190 (N.Y. 1889). Indeed, by the time Congress enacted ERISA in 1974, the "Slayer's Rule" was embodied in federal common law and was consistently applied as a judicial gloss in interpreting federal statutes governing benefits payable on death. *See, e.g., Shoemaker v. Shoemaker*, 263 F.2d 931, 932 (6th Cir. 1959); *Burns v. United States*, 200 F.2d 106, 106-07 (4th Cir. 1952); *United States v. Leverett*, 197 F.2d 30, 31-32 (5th Cir. 1952); *Austin v. United States*, 125 F.2d 816, 819-20 (7th Cir. 1942).

Thus, the "Slayer's Rule" was an established part of the common law backdrop against which Congress enacted ERISA in 1974. Accordingly, ERISA may incorporate the Slayer's Rule as reflective of congressional intent, as an accepted doctrine of federal common law, and in order to avoid absurd results. *Lofton v. West*, 198

F.3d 846, 850 (Fed. Cir. 1999) ("Congress legislates against a common law background," and "it is highly unlikely that Congress would have wanted to confer . . . benefits on persons whose claims to those benefits result from their own acts of intentional or wrongful homicide"); *see Astoria Fed. Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104, 108 (1991); *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 110 (1989) ("courts are to develop a 'federal common law of rights and obligations under ERISA-regulated plans'"); U.S. Br. 29 n.18.[4]

By contrast, the divorce-revocation statutes upon which Respondents rely are a recent phenomenon. At the time of ERISA's enactment, the uniform common-law rule held that divorce did not revoke beneficiary designations with respect to non-probate assets. *See, e.g.*, 4 L. RUSS, COUCH ON INSURANCE § 64:9, at 64-22

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[4] A similar analysis applies to the other state laws invoked by Respondents. *See* Resp. Br. 29-31. Like the common law "Slayer's Rule," definitions of terms like "child," "death," "duress," and "capacity" comprised part of the background common law of trusts in 1974 when Congress enacted ERISA. Similarly, the common law addressed the issue of simultaneous death (while ERISA does not). *See, e.g., Colovos' Adm'r v. Gouvas*, 108 S.W.2d 820 (Ky. 1937); *Masonic Temple Ass'n v. Hannum*, 184 A. 414 (N.J. 1936); *Miller v. McCarthy*, 270 N.W. 559 (Minn. 1936); *Baldus v. Jeremias*, 145 A. 820 (Pa. 1929); *Fleming v. Grimes*, 107 So. 420 (Miss. 1926); *Dunn v. New Amsterdam Cas. Co.*, 141 A.D. 478 (N.Y. 1910). These common law rules form part of the backdrop against which Congress legislated in 1974, and would provide an appropriate basis for development of federal common law rules if necessary. Of course, there is no need to resolve any of these hypothetical questions in this case. *See Ridgway v. Ridgway*, 454 U.S. 46, 60 n.9 (1981) (rejecting attempt to use state divorce decree to override beneficiary designation under federal statute, but leaving open the question whether named beneficiaries might be denied benefits in "extreme fact situations" such as "where the named beneficiary murders the insured").

to –23 (3D ED. 1996) ("Divorce per se does not affect or defeat one spouse's rights as a designated beneficiary in a policy on the other spouse's life, absent a change in beneficiary designation or a provision in the contract of insurance" to the contrary) (footnotes omitted); *Connecticut Mut. Life Ins. Co. v. Schaefer*, 94 U.S. 457, 461-63 (1876); *Marquet v. Aetna Life Ins. Co.*, 159 S.W. 733, 735 (Tenn. 1913); *Farra v. Braman*, 86 N.E. 843, 848-50 (Ind. 1909). Indeed, it was not until 1990 that the Uniform Probate Code was revised to propose a divorce-revocation rule with respect to non-probate assets like ERISA plans. *See* UNIF. PROB. CODE § 2-804 (1990). Even today, only about a third of the States have adopted some version of that approach (Resp. Br. 23 n.9); the overwhelming majority continue to adhere to the contrary common-law rule.

Moreover, ERISA's structure makes clear that Congress determined that divorce would *not* override ERISA plan beneficiary rights except when the divorce decree qualified as a QDRO. *See* Pet. Br. 23-24; U.S. Br. 14-17. Congress exempted QDROs from ERISA's preemption clause in order "to ensure that *only* those orders . . . [that qualify as QDROs] are not preempted by ERISA." S. REP. NO. 98-575, at 19 (1984), *reprinted in* 1984 U.S.C.C.A.N. 2547, 2565 (emphasis added); *see also* H.R. REP. NO. 98-655, at 42 (1984). Respondents' only response to this point is to quote legislative history out of context. Resp. Br. 21. The relevant passage actually provides that "State law providing for the[] rights and payments under a *qualified domestic relations order* will continue to be exempt from Federal preemption under ERISA." S. REP. NO. 98-575, at 19 (emphasis added). Thus, Respondents' selective quotation serves only to reemphasize the narrow scope of the QDRO exception and confirms the impermissibility of Respondents' attempts to use state divorce law to terminate beneficiary status and rights in the absence of a QDRO.

C. Section 11.07.010 Interferes With The Nationally Uniform Administration Of Employee Benefit Plans

Respondents also err in contending that § 11.07.010 does not interfere with the nationally uniform administration of ERISA plans. First, Respondents erroneously assume that "[w]here Congress desired application of a uniform rule, it so provided in the specific 'provisions' of ERISA." Resp. Br. 32. To the contrary, however, ERISA preemption is not limited to circumstances in which ERISA expressly resolves the precise question at issue. Congress instead chose to preempt state laws that "relate to" ERISA plans regardless of whether those laws violate a specific ERISA provision. *See, e.g., Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 139 (1990) ("Pre-emption is . . . not precluded simply because a state law is consistent with ERISA's substantive requirements.").[5]

Second, Respondents are mistaken in asserting that the variations in state divorce-revocation law are "basically imagined." Resp. Br. 36 n.23. Most fundamentally, the law in states like Washington is directly inconsistent with the law in the majority of states that adhere to the common law rule. It was precisely to avoid such a patchwork scheme of inconsistent state regulation that Congress enacted ERISA's preemption provision. *E.g., Travelers*, 514 U.S. at 657; Pet. Br. 17-21. Moreover,

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[5] Respondents argue that uniformity is "one goal among the many goals animating ERISA," relying on the fact that ERISA plans are subject to state regulation of insurance, banking, securities, and criminal law, and through QDROs. Resp. Br. 32. But in each of these instances, Congress expressly exempted such laws from ERISA preemption and thereby expressly approved of any resulting disuniformity in plan administration caused by these laws. ERISA §§ 514(b)(2)(A), (b)(4), (b)(7), 29 U.S.C. §§ 1144(b)(2)(A), (b)(4), (b)(7). By contrast, Congress did not exempt state divorce-revocation statutes from preemption.

within the minority of states that currently provide for revocation of beneficiary status upon divorce, the individual state laws differ with regard to the types of property to which they apply, the classes of individuals whose rights are voided, and the specific conditions under which they do and do not apply. *See* Pet. Br. 20 n.8. The potential for additional variations in the future is essentially limitless.

Next, Respondents argue that some ERISA plans may already be aware of state laws such as § 11.07.010 because they administer assets that do not qualify for ERISA preemption. Resp. Br. 39. But the fact that some plans or insurers may voluntarily subject themselves to different state laws by administering particular assets does not change Congress's intent to immunize ERISA plans from state laws that would "result[] in a complex set of requirements varying from State to State." *Boggs*, 520 U.S. at 851.[6] Quite simply, if state laws such as § 11.07.010 were permitted to trump ERISA plan beneficiary designations, plans would face a multiplicity of inconsistent state regulation, contrary to this congressional intent. Pet. Br. 17-21. Like the state laws preempted in *Shaw*, *Holliday*, and *Alessi*, which would have required plans to restructure themselves in accordance with state law or to adopt different beneficiary payment schemes in different states (*see* Pet. Br. 16-17), state laws such as § 11.07.010 would force ERISA

[6] Respondents' claim that § 11.07.010 would actually reduce administrative burdens by providing a "default rule" is plainly erroneous. Resp. Br. 33. The plans at issue here are not in need of a "default rule"—they establish by their own terms a clear rule for determining beneficiary status. As the Court explained in *Fort Halifax*, "[t]he most efficient way to meet these [plan] responsibilities is to establish a uniform administrative scheme, which provides a set of standard procedures to guide processing of claims and disbursement of benefits"—precisely what the plans at issue here have done. *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 9 (1987).

plans "to accommodate conflicting regulatory schemes in devising and operating a system for processing claims and paying benefits—*precisely the burden that ERISA pre-emption was intended to avoid*." *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 10 (1987) (emphasis added).[7]

III. SECTION 11.07.010 CONFLICTS WITH ERISA'S PROVISIONS AND OBJECTIVES

A. Section 11.07.010 Conflicts With The Definition Of "Beneficiary"

Respondents assert that § 11.07.010 does not conflict with ERISA's definition of "beneficiary" because they claim to be contingent beneficiaries under the pension plan. Resp. Br. 39-41. To the contrary, however, Respondents' claim to enjoy the status of contingent beneficiaries merely confirms that their attempt to obtain the ERISA benefits at issue here is preempted. As previously discussed (Pet. Br. 13-15 & n.4), claims for benefits brought by purported beneficiaries fall within the "complete preemption" doctrine and are so thoroughly federal in nature that they arise exclusively under federal law, even when, as here, the suit "purports to raise only state law claims." *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 67 (1987). Respondents do not

[7] Respondents claim that *Fort Halifax* upheld a state law that "imposed a far more burdensome requirement than [§] 11.07.010—the obligation to pay a severance benefit." Resp. Br. 33. Respondents' argument ignores the crucial distinction that this Court found dispositive in *Fort Halifax*. The state law at issue there did not purport to regulate or affect *ERISA plans* at all; rather, it simply required *employers* to provide a one-time, lump-sum severance benefit. 482 U.S. at 12. Since the statute did not regulate existing ERISA plans and "neither establish[ed], nor require[d] an employer to maintain" such a plan, it did not "relate to" an ERISA plan within the meaning of § 514(a). *Id.* By contrast, § 11.07.010 is expressly directed at "employee benefit plan[s]." WASH. REV. CODE § 11.07.010(5)(a).

even respond to this point, much less offer any basis for avoiding the complete preemption of their state-law claims.

Even leaving aside the complete preemption doctrine, Respondents' claim of contingent beneficiary status does nothing to advance their cause. For purposes of conflict preemption analysis, the crucial point—essentially ignored in Respondents' brief—is that *Petitioner* is unquestionably the sole designated beneficiary entitled to receive benefits pursuant to the terms of the plan and ERISA's definition of "beneficiary." As is confirmed by the regulatory interpretation promulgated by the Internal Revenue Service in the exercise of its regulatory authority under ERISA, divorce does not invalidate a participant's beneficiary designation, and "any elections made while the participant was married to his former spouse *remain valid*, unless otherwise provided in a QDRO, or unless the participant changes them or is remarried." 26 C.F.R. § 1.401(a)-20, A-25(b)(3) (2000).

Thus, by purporting to deprive Petitioner of her "beneficiary" status—a status conferred *by the text of ERISA itself*, 29 U.S.C. § 1002(8)—Washington's statute conflicts directly with ERISA. That undeniable conflict, standing alone, compels a finding of preemption. *See* Pet. Br. 28-30, 39-40; *see also Ridgway v. Ridgway*, 454 U.S. 46, 59-60 (1981) (beneficiary designation under Servicemen's Group Life Insurance Act prevails over contrary result mandated by state divorce law, because "[f]ederal law and federal regulations bestow upon the service member an absolute right to designate the policy beneficiary"); *Wissner v. Wissner*, 338 U.S. 655, 658 (1950).

In addition, Respondents' claim to be contingent beneficiaries is unpersuasive. Upon the plan participant's death, Petitioner's rights as the designated beneficiary became irrevocable, because she was the only "person designated by [the] participant" in accordance with the "terms of [the] employee benefit plan[s]." 29

U.S.C. § 1002(8). Under the terms of the plan, therefore, Respondents are not persons "who . . . may become entitled to a benefit thereunder," and accordingly they are not contingent beneficiaries.

Even if Respondents were contingent beneficiaries, moreover, their rights would necessarily be inferior to those of Petitioner, the primary beneficiary under the plan terms. As mere contingent beneficiaries, Respondents would have no ability to divest Petitioner of her rights to the plan benefits. Respondents' argument (Resp. Br. 44) that ERISA has no preference for primary beneficiaries over mere contingent beneficiaries is simply wrong. Upon the death of the plan participant and vesting of Petitioner's rights to the plan benefits, Petitioner alone was entitled to the benefits, and ERISA protects her right to receive them. 29 U.S.C. §§ 1104(a)(1)(D), 1132(a)(1).

Respondents argue that "the statute triggers the plan's alternate beneficiary provisions by deeming the former spouse to have predeceased the plan participant." Resp. Br. 40. But the federally protected rights of beneficiaries who have been designated by a plan participant in accordance with the terms of an ERISA plan cannot be nullified by the simple ruse of promulgating a state law that pretends those beneficiaries do not exist. *See* Pet. Br. 29-30; *see also Free v. Bland*, 369 U.S. 663, 669 (1962). For the same reason, Respondents' claim that Petitioner's designation is "invalid" is equally unpersuasive. Resp. Br. 47. If states were permitted to "invalidate" beneficiary designations in this manner, ERISA's solicitude for the protection of beneficiaries would be wholly illusory.[8]

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[8] Moreover, it is the ERISA plan administrators, not the courts or state legislatures, who possess discretion to determine whether a beneficiary designation is "invalid" within the meaning of the plan. *See* Resp. Lodging, tab 4, at 12-2 ¶ 12.7; *Bruch*, 489 U.S. at 115. No such determination has been made (or even requested) here.

B. Section 11.07.010 Conflicts With ERISA's Protections For Beneficiaries

Respondents also claim that § 11.07.010 does not conflict with ERISA's provisions protecting beneficiaries' rights to the benefits due under plan documents. Resp. Br. 46. This claim lacks merit. First, contrary to the straw man put forward by Respondent, Petitioner does not assert that ERISA preempts all state laws that conflict with ERISA plan provisions. Instead, Petitioner's position is much narrower: § 11.07.010 is preempted because it imposes a state-law rule of decision for determination of beneficiary status and distribution of benefits, and in so doing compels plan administrators to breach their ERISA-imposed, federally enforceable duties to make benefit determinations in accordance with the terms of the governing plan. Pet. Br. 31-33; U.S. Br. 20-22.

Whatever role state law might have in other circumstances, ERISA's comprehensive regulation of beneficiary status and rights leaves no room for enforcement of laws like § 11.07.010. Congress has expressly mandated that ERISA plans shall "specify the basis on which payments are made . . . from the plan," plan administrators "shall" comply with those plan documents, and beneficiaries have an exclusively federal cause of action "to enforce [their] rights under the terms of the plan." 29 U.S.C. §§ 1102(a)(1), (b)(4), 1104(a)(1)(D), 1132(a). Congress intended that the rights of beneficiaries would be determined by reference to readily accessible ERISA plan documents, not on the basis of varying and inconsistent state laws. Pet. Br. 31-33. By directing plan administrators to pay benefits in a manner contrary to the terms of ERISA plans, § 11.07.010 plainly conflicts with ERISA's provisions and frustrates its objectives.

C. Section 11.07.010 Conflicts With ERISA's Anti-Alienation Clause

Respondents' contention that § 11.07.010 does not conflict with ERISA's anti-alienation provision is

equally unavailing. Resp. Br. 41. The IRS has defined "assignment" and "alienation" to include "[a]ny direct or indirect arrangement (whether revocable or irrevocable) whereby a party acquires from a participant or beneficiary a right or interest enforceable against the plan in, or to, all or any part of a plan benefit payment which is, or may become, payable to the participant or beneficiary." 26 C.F.R. § 1.401(a)-13(c)(ii) (2000). Respondents argue that § 11.07.010 does not effect an "assignment or alienation" because under that statute Respondents do not acquire any interest "'from' the named beneficiary." Resp. Br. 42. This reading defies common sense and the ordinary meaning of the relevant terms.

Prior to David Egelhoff's death, Petitioner had a revocable right to receive ERISA benefits upon his death. According to Respondents, § 11.07.010 operated to deprive Petitioner of her status as sole designated beneficiary entitled to plan benefits in these circumstances, thereby causing those rights to pass to Respondents. Thus, § 11.07.010 purports to effect an alienation of ERISA benefits "from" the designated beneficiary to another party. U.S. Br. 24-25. Respondents' attempt to deny this reality is sheer sophistry, and cannot withstand scrutiny.[9]

As this Court has explained, ERISA's prohibition against alienation "is mandatory and contains only two explicit exceptions," for plan loans and QDROs, "which

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[9] Respondents err in contending (Resp. Br. 42) that the plain-language interpretation of the anti-alienation provision would bar changes in beneficiary designations at the instance of the participant or upon divorce. ERISA expressly authorizes plan participants to determine beneficiaries and specifically terminates guaranteed spousal annuity rights upon divorce (29 U.S.C. §§ 1002(8), 1056(d)(3)(F)(i)), making clear that such occurrences are permissible without regard to the anti-alienation provision. By contrast, no provision of ERISA authorizes states to transfer beneficiary rights from one individual to another.

are not subject to judicial expansion." *Boggs*, 520 U.S. at 851. Because § 11.07.010 purports to transfer pension plan benefits from the designated beneficiary to other individuals without the use of a plan loan or QDRO, it attempts to effect an assignment or alienation and is barred by ERISA's anti-alienation clause. *See, e.g., id.* at 851-53; Pet. Br. 36-41.[10]

D. Respondents' Reliance On Federal Common Law Is Misplaced

Finally, Respondents claim that, if ERISA preempts § 11.07.010, the Court should create a federal common-law rule that "look[s] to state law for its content." Resp. Br. 49. This suggestion is directly contrary to ERISA's provisions and purposes. As this Court has explained, "[t]he authority of courts to develop a 'federal common law' under ERISA . . . is not the authority to revise the text of the statute." *Mertens v. Hewitt Assocs.*, 508 U.S. 248, 258-59 (1993). Because a divorce-revocation rule would conflict directly with ERISA's specific definition

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10 Respondents' attempt to distinguish *Boggs*, *Guidry*, and *Patterson* fails. According to Respondents, these cases demonstrate "that alienation has consistently been understood to involve the transfer to third parties of a person's continuing interest in a pension plan and not the loss of an interest that results in the ripening of a subsequent and nonderivative claim of right by other beneficiaries." Resp. Br. 42-43 n.28. Respondents' comparison presents a distinction without a difference. Section 11.07.010 would operate to "transfer to third parties [*i.e.*, Respondents] a person's [*i.e.*, Petitioner's] continuing interest in a pension plan." Moreover, ERISA's anti-alienation prohibition is categorical—ERISA permits a transfer of pension plan benefits if and only if the alienation occurs in a manner authorized by ERISA, such as through a QDRO. *See, e.g.*, *Boggs*, 520 U.S. at 851. Absent such statutory authorization, ERISA expressly prohibits the transfer, regardless of whether the beneficiary "los[es] . . . an interest that results in the ripening of a subsequent and nonderivative claim of right by other beneficiaries."

of and protections for the rights of designated beneficiaries (Pet. Br. 28-41), there is no basis for creation of a federal common law rule in this area. U.S. Br. 27-29.

Even if this Court were to find room for the operation of federal common law in this area, moreover, Respondents' suggestion that the Court merely adopt state laws like § 11.07.010 would have to be rejected. While "state law may be incorporated as the federal rule of decision" when "there is little need for a nationally uniform body of law," the opposite result is required here, because areas of law "that 'by their nature are and must be uniform in character throughout the Nation' necessitate formulation of controlling federal rules." *United States v. Kimbell Foods*, 440 U.S. 715, 728 (1979); *see, e.g., Kamen v. Kemper Fin'l Servs., Inc.*, 500 U.S. 90 (1991). In light of Congress's express intent in ERISA to secure "the nationally uniform administration of employee benefit plans," *Travelers*, 514 U.S. at 657, it would be entirely impermissible to incorporate the laws of each state in developing a common law rule regarding beneficiary designations in the event of divorce—to do so would result in the very sort of inconsistency in ERISA plan administration that Congress sought to avoid. Rather, courts developing federal common law under ERISA should apply a uniform, federal rule.

In cases in which it is appropriate for courts to develop federal common law for ERISA, courts look to the principles of trust law to determine the content of that common law. *See, e.g., Bruch*, 489 U.S. at 110 (because "ERISA abounds with the language and terminology of trust law[,] . . . . we have held that the courts are to develop a 'federal common law of rights and obligations under ERISA-regulated plans'") (citation omitted); *id.* at 111 ("[W]e are guided by principles of trust law.").

The common law of trusts does not provide for revocation by divorce. The basic rule is that once a settlor successfully creates a trust, he or she may neither revoke nor modify it unless the terms of the trust so pro-

vide, and revocation is permissible only under limited circumstances (such as fraud, duress, undue influence, or mistake) that do not include divorce. *See* RESTATEMENT (SECOND) OF TRUSTS §§ 330, 333 cmt. a (1959); G. BOGERT & G. BOGERT, THE LAW OF TRUSTS AND TRUSTEES §§ 992-93, at 218-19 & n.2, 230-32 (REV. 2D ED. 1983). Indeed, the common law rule provides that divorce is a condition for which the settlor should plan, not one for which courts will make provision by operation of law. *Id.* § 994, at 247-48. And, as discussed above (*supra* pp. 9-10), this common law approach continues to be followed in an overwhelming majority of states. Thus, a federal common law rule, guided by principles of trust law and in keeping with the common law background against which Congress enacted ERISA, would hold that beneficiary designations are not revoked in the event of divorce.

CONCLUSION

Section 11.07.010 is preempted by ERISA because it "relates to" and has a "connection with" an ERISA plan, and because it directly conflicts with ERISA's text, structure, and purposes. For all of the foregoing reasons, the decision of the Supreme Court of Washington should be reversed, and Petitioner's entitlement to the plan benefits at issue in this case should be confirmed.

Respectfully submitted.

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No. 99-1529

In the Supreme Court of the United States

DONNA RAE EGELHOFF, PETITIONER

v.

SAMANTHA EGELHOFF, A MINOR, BY AND THROUGH HER NATURAL PARENT KATE BREINER, AND DAVID EGELHOFF

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WASHINGTON

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

Whether the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001 *et seq.*, preempts a state law that purports to revoke the designation of beneficiary made pursuant to the terms of an ERISA plan.

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BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

INTEREST OF THE UNITED STATES

This case presents the question whether the Employee Retirement Income Security Act of 1974 (ERISA or the Act), 29 U.S.C. 1001 *et seq.*, preempts a state law that purports to revoke a beneficiary designation made, in accordance with the terms of an ERISA-governed employee benefit plan, by a participant in that plan. The Secretary of Labor has primary rulemaking and enforcement authority under Title I of ERISA, see 29 U.S.C. 1002(13), 1136(b), and therefore has a strong interest in ensuring that preemption principles are properly applied by the courts to ensure a nationally uniform system of plan administration.

STATEMENT

1. Petitioner, Donna Rae Egelhoff, was the second wife of David Egelhoff. During their marriage, David Egelhoff designated petitioner as beneficiary under a life insurance plan and a pension plan, both of which were sponsored by his employer, The Boeing Company, and governed by ERISA. Pet. App. 1a-3a, 30a.

Petitioner and David Egelhoff subsequently divorced. Pursuant to a document incorporated into the decree of dissolution, entered April 22, 1994, David Egelhoff was granted "100% of his Boeing retirement 401K and IRA." No mention was made in the document of David Egelhoff's life insurance policy. Pet. App. 3a, 30a.

On July 8, 1994, David Egelhoff died intestate, following an automobile accident. At that time, petitioner remained the beneficiary of record under both David Egelhoff's life insurance policy and his pension plan. The life insurance proceeds, totaling $46,000, were paid to her. Pet. App. 4a, 30a.

2. a. Respondents, who are David Egelhoff's children by his first marriage and his statutory heirs under state law, filed a conversion action against petitioner, seeking to recover the life insurance proceeds. They contended that their father's designation of petitioner as beneficiary under the life insurance policy was "revoked," by operation of state law, upon petitioner's divorce from Egelhoff. Pet. App. 4a-5a.

Respondents relied on Section 11.07.010 of the Washington Revised Code Annotated, which provides, in pertinent part:

> If a marriage is dissolved or invalidated, a provision made prior to that event that relates to the payment or transfer at death of the decedent's interest in a nonprobate asset in favor of or granting an interest or power to the decedent's former spouse is revoked. A provision affected by this section must be interpreted, and the nonprobate asset affected passes, as if the former spouse failed to survive the decedent, having died at the time of entry of the decree of dissolution or declaration of invalidity.

Wash. Rev. Code Ann. § 11.07.010(2)(a) (West 1998). The statute applies to "all nonprobate assets, wherever situated, held at the time of entry by a superior court of this state of a decree of dissolution of marriage." *Id.* § 11.07.010(1). The statute defines the term "nonprobate assets" to include "a payable-on-death provision of a life insurance policy, employee benefit plan, annuity or similar contract, or individual retirement account." *Id.* § 11.07.010(5)(a).

b. Respondents separately brought suit against petitioner for the pension benefits, claiming that, under the property settlement incorporated into the divorce decree, petitioner had waived any right to those benefits. They further claimed that, in the event of such a waiver by David Egelhoff's only designated beneficiary, they became the beneficiaries under the terms of the plan. Pet. App. 6a, 30a-31a.

c. The state trial courts granted summary judgment in favor of petitioner in both cases. The courts concluded that the pension and insurance benefits "should be administered in accordance with" ERISA. Pet. App. 45a-48a.

3. The state court of appeals consolidated the cases and then reversed. Pet. App. 29a-44a. The court held that respondents, as their father's statutory heirs, were entitled under Section 11.07.010 to the life insurance proceeds and the pension benefits. *Id.* at 35a. The court rejected the trial courts' conclusion that ERISA preempts the application of Section 11.07.010 to alter the designation of beneficiaries under an employee benefit plan covered by ERISA, relying

on the Ninth Circuit's decision in *Emard* v. *Hughes Aircraft Co.*, 153 F.3d 949 (1998), cert. denied, 525 U.S. 1122 (1999), upholding the use of state law to alter such a designation. Pet. App. 35a-42a.[1]

4. The Washington Supreme Court affirmed. Pet. App. 1a-27a.

a. The state supreme court recognized that "ERISA contains a broad preemption provision that supersedes state laws that 'relate to' employee benefit plans," and that this Court has traditionally accorded the provision an "expansive interpretation." Pet. App. 10a (citing 29 U.S.C. 1144(a)), 12a. But the court read three of this Court's recent ERISA preemption decisions, beginning with *New York State Conference of Blue Cross & Blue Shield Plans* v. *Travelers Insurance Co.*, 514 U.S. 645 (1995), as "signal[ing] a significant retreat" from that earlier approach. Pet. App. 12a. The court also acknowledged, however, that the preemption provision continues after *Travelers* to invalidate those state laws that either "refer[] to" or have a "connection with" ERISA plans. *Id.* at 19a.

First, the state supreme court held that Section 11.07.010, although expressly referring to benefits payable under, *inter alia*, "employee benefit plan[s]," does not "refer to" ERISA plans to an extent that requires preemption. Pet. App. 19a-20a. The court, invoking this Court's discussion of the "reference to" prong of ERISA preemption analysis in *California Division of Labor Standards Enforcement* v. *Dillingham Construction, N.A., Inc.*, 519 U.S. 316 (1997), stated that Section 11.07.010 "does not apply immediately

[1] The court of appeals found it unnecessary to address respondents' alternative argument that, under the property settlement incorporated into the divorce decree, petitioner "waived" her rights to the pension proceeds. Pet. App. 31a-32a n.7. The Washington Supreme Court likewise did not address the "waiver" issue. *Id.* at 27a.

and exclusively to an ERISA plan, nor is the existence of such a plan essential to operation of the statute." Pet. App. 20a.

Second, the state supreme court held that Section 11.07.010 does not have a sufficient "connection with" ERISA plans to require preemption. Pet. App. 20a. The court noted that a state law "[g]enerally" has a prohibited "connection with" an ERISA plan if it "mandates plan benefit structures or some aspect of their administration." *Ibid.* But the court reasoned that "the mere fact that [Section 11.07.010] may operate upon the beneficiary designation in an ERISA plan" is not sufficient to bring it within that category. *Id.* at 21a. The court viewed Section 11.07.010 as merely triggering the plan's own default provisions under the "legal fiction that the former spouse did not survive the decedent," and thus as not "alter[ing] the nature of the plan itself, the administrator's fiduciary duties, or the requirements for plan administration." *Ibid.* (internal quotation marks and brackets omitted).

b. The state supreme court then turned to the issue of conflict preemption. The court held that Section 11.07.010 does not conflict with ERISA's anti-alienation provision, 29 U.S.C. 1056(d)(1), which states that "[e]ach pension plan shall provide that benefits provided under the plan may not be assigned or alienated." Pet. App. 23a. The court reasoned that the state statute "does not operate to divert benefit plan proceeds from distribution under terms of the plan documents," but merely alters "the underlying circumstances to which the distribution scheme of [the] plan must be applied." *Id.* at 25a- 26a.

SUMMARY OF ARGUMENT

The state statute at issue in this case, Section 11.07.010 of the Washington Revised Code Annotated, is preempted in its application to employee benefit plans governed by

ERISA. Section 11.07.010, as a state law that "relate[s] to any employee benefit plan," is expressly preempted under Section 514(a) of ERISA, 29 U.S.C. 1144(a). In addition, Section 11.07.010 squarely conflicts with several substantive provisions of ERISA, and thus is preempted under ordinary conflict preemption principles.

A. Section 11.07.010 "relate[s] to" ERISA plans, within the meaning of Section 514(a), by regulating an area of core concern under ERISA, the designation of beneficiaries and payment of benefits under ERISA plans. The state statute directly, indeed expressly, addresses who is to receive benefits under "[a] payable-on-death provision of a[n] * * * employee benefit plan." Wash. Rev. Code Ann. § 11.07.010(5)(a) (West 1998). The statute "revokes" a participant's designation of his or her spouse as a beneficiary under the plan if the participant and the spouse divorce after the designation is made. *Id.* § 11.07.010(2)(a). The statute thus dictates who is, and who is not, entitled to benefits under an ERISA plan.

Congress did not intend to leave such central questions in the administration of ERISA plans for resolution under state law. To the contrary, Congress sought to establish uniform "standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans," by, *inter alia*, directing that fiduciaries act "in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with [ERISA]." 29 U.S.C. 1001(b); 29 U.S.C. 1104(a)(1)(D). Congress also directed that fiduciaries administer such plans "for the exclusive purpose of * * * providing benefits to participants and their beneficiaries," defining the latter as those persons "designated by a participant, or by the terms of an employee benefit plan," to receive benefits. 29 U.S.C. 1104(a)(1)(A); 29 U.S.C. 1002(8). Congress thus intended that fiduciaries, in determining who is entitled to benefits under an ERISA plan, look only to ERISA itself, the

governing plan documents, and the participant's beneficiary designation, and *not* to state law.

Clearly, then, those areas in which Congress sought "to avoid a multiplicity of regulations in order to permit the nationally uniform administration of employee benefit plans," *New York State Conference of Blue Cross & Blue Shield Plans* v. *Travelers Ins. Co.*, 514 U.S. 645, 658 (1995), include the designation of beneficiaries and the payment of benefits under such plans. State laws, such as Section 11.07.010, that purport to regulate in those areas are expressly preempted under Section 514(a) of ERISA.

B. In addition, Section 11.07.010 is preempted in its application to ERISA plans because it "conflicts with the provisions of ERISA" and "operates to frustrate its objects." *Boggs* v. *Boggs*, 520 U.S. 833, 841 (1997). As noted above, ERISA requires that employee benefit plans be administered "in accordance with the documents and instruments governing the plan," 29 U.S.C. 1104(a)(1)(D), and specifically defines beneficiaries as those "designated by a participant, or by the terms of an employee benefit plan," 29 U.S.C. 1002(8). Those provisions require that benefits be paid to the person designated under the terms of the plan. Section 11.07.010, by contrast, requires that the benefits be paid to somebody else. And, in so doing, Section 11.07.010 undermines Congress's intent that employee benefit plans be uniform in their administration and simple in their application, so that participants, beneficiaries, and administrators are able to understand their rights and responsibilities with certainty.

Section 11.07.010 also conflicts with yet another provision of ERISA, 29 U.S.C. 1056(d)(1), which prohibits pension plan benefits from being "assigned or alienated," and thus from being diverted to purposes other than providing for participants and their designated beneficiaries. Section 11.07.010 extinguishes a designated beneficiary's right to pension

benefits and, in effect, "assigns" and "alienates" those benefits to another person. Accordingly, to the extent that Section 11.07.010 applies to ERISA pension plans, it is preempted for this additional reason.

ARGUMENT

ERISA PREEMPTS STATE LAW DISALLOWING THE DISTRIBUTION OF PENSION AND WELFARE BENEFITS TO THE BENEFICIARY WHO HAS BEEN PROPERLY DESIGNATED UNDER THE TERMS OF AN ERISA PLAN

ERISA is a "comprehensive statute designed to promote the interests of employees and their beneficiaries in employee benefit plans." *Shaw* v. *Delta Air Lines, Inc.*, 463 U.S. 85, 90 (1983). To that end, ERISA "sets various uniform standards, including rules concerning reporting, disclosure, and fiduciary responsibility, for both pension and welfare plans," and "imposes participation, funding, and vesting requirements on pension plans." *Ingersoll-Rand Co.* v. *McClendon*, 498 U.S. 133, 137 (1990) (quoting *Shaw*, 463 U.S. at 91). In addition, ERISA provides "a carefully integrated civil enforcement scheme that is one of the essential tools for accomplishing the stated purposes of ERISA." *Ibid.* (internal quotation marks and citation omitted).

Section 514(a) of ERISA, 29 U.S.C. 1144(a), is an express preemption provision that, subject to various exceptions not at issue here,[2] "shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan" governed by ERISA. As this Court has explained,

[2] For instance, the insurance savings clause, 29 U.S.C. 1144(b)(2)(A), exempts from preemption those state laws that "regulate[] insurance." Respondents have not, to our knowledge, claimed that Section 11.07.010 is so saved, and we assume that Section 11.07.010, which by its terms is not directed solely at insurance companies, is not an insurance regulation. See *UNUM Life Ins. Co. of Am.* v. *Ward*, 526 U.S. 358, 368 (1999).

Section 514(a) "indicates Congress's intent to establish the regulation of [ERISA] plans 'as exclusively a federal concern.'" *New York State Conference of Blue Cross & Blue Shield Plans* v. *Travelers Ins. Co.*, 514 U.S. 645, 656 (1995) (quoting *Alessi* v. *Raybestos-Manhattan, Inc.*, 451 U.S. 504, 523 (1981)). Section 514(a) was designed "to ensure that plans and plan sponsors would be subject to a uniform body of benefits law," and thus "to minimize the administrative and financial burden of complying with conflicting directives among States or between States and the Federal Government." *Ibid.* (quoting *Ingersoll-Rand*, 498 U.S. at 142).[3]

Accordingly, Section 514(a), while not without limits, is "clearly expansive" in its preemptive sweep. *California Div. of Labor Standards Enforcement* v. *Dillingham Constr., N.A., Inc.*, 519 U.S. 316, 324 (1997) (quoting *Travelers*, 514 U.S. at 655). To be sure, Section 514(a) does not reach state laws of general applicability that have only an "indirect economic influence" or some other merely incidental impact on ERISA plans. *Travelers*, 514 U.S. at 659. To the extent, however, that a state law purports to regulate matters at the core of ERISA—such as the content or administration of ERISA plans or the mechanisms for enforcing rights under those plans—this Court has not hesitated to hold the state law preempted under Section 514(a). See *Travelers*, 514 U.S.

[3] See also *Shaw*, 463 U.S. at 99 (quoting 120 Cong. Rec. 29,933 (1974) (remarks of Senator Williams) ("It should be stressed that with the narrow exceptions specified in the bill, the substantive and enforcement provisions of the conference substitute are intended to preempt the field for Federal regulations, thus eliminating the threat of conflicting or inconsistent State and local regulation of employee benefit plans.")); *ibid.* (quoting 120 Cong. Rec. 29,197 (1974) (remarks of Representative Dent) (the "crowning achievement" of ERISA is "the reservation to Federal authority the sole power to regulate the field of employee benefit plans")); *id.* at 99-100 n.29 (quoting 120 Cong. Rec. 29,942 (1974) (remarks of Senator Javits)).

at 657-658 (discussing *Shaw*, *Alessi*, *Ingersoll-Rand*, and *FMC Corp.* v. *Holliday*, 498 U.S. 52, 60 (1990)); see also *Metropolitan Life Ins. Co.* v. *Massachusetts*, 471 U.S. 724, 739 (1985) (Section 514(a) "displace[s] all state laws that fall within its sphere, even including state laws that are consistent with ERISA's substantive requirements").

Moreover, whatever the limits of express preemption under Section 514(a), ERISA, like all federal statutes, operates under supremacy principles that require preemption "where compliance with both federal and state regulations is a physical impossibility, . . . or where state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Boggs* v. *Boggs*, 520 U.S. 833, 844 (1997) (quoting *Gade* v. *National Solid Wastes Management Ass'n*, 505 U.S. 88, 98 (1992)); see also, *e.g.*, *Ingersoll-Rand*, 498 U.S. at 142-145. Thus, in *Boggs*, because the state community property law at issue "conflict[ed] with the provisions of ERISA" and "operat[ed] to frustrate its objects," the Court perceived no need to inquire whether Section 514(a) "provide[d] further and additional support for the pre-emption claim." 520 U.S. at 841.

Here, the Washington statute, to the extent that it overrides beneficiary designations made in accordance with the provisions of an ERISA plan, is preempted, whether the question is analyzed as one of express preemption or of conflict preemption. The state statute "relate[s] to an[] employee benefit plan" governed by ERISA, within the meaning of Section 514(a), because the statute expressly refers to rights under "employee benefit plans" and seeks to regulate core matters in the administration of such plans, the designation of beneficiaries and the distribution of benefits. The state statute squarely conflicts with Congress's directive that fiduciaries administer ERISA plans "in accordance with the documents and instruments governing the plan,"

29 U.S.C. 1104(a)(1)(D), because the statute requires the payment of benefits to persons other than those entitled to them under the governing plan documents. In addition, to the extent that the state statute reaches the payment of benefits under ERISA pension plans, the statute also conflicts with 29 U.S.C. 1056(d)(1), which prohibits the assignment or alienation of pension plan benefits.

I. The Washington Statute, As A State Law That "Relate[s] To" Employee Benefit Plans Governed By ERISA, Is Preempted Under Section 514(a)

This Court has recognized that Section 514(a), in "supersed[ing] any and all State laws insofar as they * * * relate to any employee benefit plan" governed by ERISA, is a preemption provision "conspicuous for its breadth." *Dillingham*, 519 U.S. at 324 (quoting *FMC Corp.*, 498 U.S. at 58). The Court has also recognized, however, that Congress could not have intended Section 514(a) to "extend to the furthest stretch of its indeterminacy," preempting state laws of general applicability that have "only a tenuous, remote, or peripheral connection with covered plans." *Travelers*, 514 U.S. at 655, 661 (quoting *District of Columbia* v. *Greater Washington Bd. of Trade*, 506 U.S. 125, 130 n.1 (1992)). The Court has thus sought to give content to the statutory phrase "relate to any employee benefit plan" by looking to "the objectives of the ERISA statute" as a whole. *Id.* at 656.

The Court has identified two categories of state laws that are subject to preemption under Section 514(a): first, state laws that specifically "refer to" ERISA plans and, second, state laws that otherwise have a "connection with" ERISA plans. *Dillingham*, 519 U.S. at 324-325. Not every state law that affects ERISA plans falls into the second category. The category does, however, encompass those state laws that implicate Congress's objective in Section 514(a) "to avoid a multiplicity of regulation in order to permit the nationally

uniform administration of employee benefit plans." *Travelers*, 514 U.S. at 657. Such prohibited state laws include, among others, those that regulate "employee benefit structures or their administration." *Id.* at 658. By contrast, the state laws that the Court has held not to be preempted under that analysis were laws of general applicability that had only an incidental economic impact on ERISA plans.[4] The state statute at issue in this case falls squarely into the prohibited category, because the statute purports to dictate the payment of benefits under ERISA plans, a matter of plan structure and administration.

1. One of the areas in which Congress has sought "to avoid a multiplicity of [state] regulation in order to permit the nationally uniform administration of employee benefit plans," *Travelers*, 514 U.S. at 657, is the conservation and distribution of ERISA plan benefits. That area includes determinations by ERISA plan administrators as to the proper recipients of benefits payable under the plan. Congress made the protection of benefits a central purpose of ERISA, established uniform standards to govern the conduct of fiduciaries who administer the benefits, directed fiduciaries to administer plans (*e.g.*, to pay benefits) in accordance with the governing plan documents, and defined

[4] See *Travelers*, 514 U.S. at 659 (describing state law that imposed a surcharge on hospital patients who were insured by commercial insurers other than Blue Cross-Blue Shield as having only "an indirect economic effect on choices made by insurance buyers, including ERISA plans"); see also *De Buono* v. *NYSA-ILA Med. & Clinical Servs. Fund*, 520 U.S. 806, 810-816 (1997) (state tax imposed on all hospitals, including those operated by ERISA plan); *Dillingham*, 519 U.S. at 330 (state law that required all contractors on state construction projects to pay the prevailing wage, with an exception for state-approved apprenticeship programs, whether or not operated as an ERISA plan); *Mackey* v. *Lanier Collection Agency & Serv.*, 486 U.S. 825, 831-836 (1988) (state garnishment law of general applicability).

the beneficiaries of plan benefits by reference to those documents.

Congress's declared objectives in ERISA include "to protect * * * the interest of participants in employee benefit plans and their beneficiaries" by, *inter alia*, "establishing standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans." 29 U.S.C. 1001(b); see *Boggs*, 520 U.S. at 845 (observing that the "principal object of [ERISA] is to protect plan participants and beneficiaries"). To that end, Congress made clear that a fiduciary of an employee benefit plan covered by ERISA "shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries" and "for the exclusive purpose of * * * providing benefits to participants and their beneficiaries" and defraying reasonable administrative expenses. 29 U.S.C. 1104(a)(1)(A); see *Boggs*, 520 U.S. at 846-847 (discussing those provisions).

Congress further delineated the responsibilities of the ERISA plan fiduciary in Section 404(a)(1) of the Act, 29 U.S.C. 1104(a)(1), by specifying the source of the governing rules, in addition to those in ERISA itself, for the fiduciary to apply in administering the plan. Section 404(a)(1) provides that the fiduciary "shall discharge his duties with respect to a plan * * * in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of [ERISA]." Congress thus contemplated that a fiduciary, in deciding the myriad questions that arise in the administration of an ERISA plan (including questions as to the proper beneficiary of proceeds payable under the plan), would be governed by ERISA itself and by the "documents and instruments governing the plan." Congress did not also provide that fiduciaries were to look generally to state law in resolving questions of plan administration. To do so would have been contrary to the central goal of fostering "uniform-

ity of decision" in the administration of ERISA plans, so that "administrators, fiduciaries and participants [may] predict the legality of proposed actions without the necessity of reference to varying state laws." H.R. Rep. No. 533, 93d Cong., 1st Sess. 12 (1973) (discussing fiduciary duty provisions).

Congress's understanding that ERISA plan fiduciaries would resolve questions of plan administration, specifically including questions concerning the proper recipient of benefits under a plan, solely by reference to ERISA and the plan documents is further reflected in the statutory definitions of "participant" and "beneficiary." The statute defines a "participant" as "any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employer or members of such organization, or whose beneficiaries may be eligible to receive any such benefit." 29 U.S.C. 1002(7). The statute then defines a "beneficiary" as "a person designated by a participant, or by the terms of an employee benefit plan, who is or may become entitled to a benefit thereunder." 29 U.S.C. 1002(8). Congress thus contemplated that the fiduciary, in determining whether a person was entitled to receive benefits as a beneficiary under the plan, would look no further than the participant's beneficiary designation and the documents setting forth the "terms of [the] employee benefit plan."

Moreover, where Congress intended that plan fiduciaries would look beyond the participant's beneficiary designation to determine the proper recipient of benefits under the plan, Congress expressly so provided in ERISA itself. For example, ERISA requires that pension plans pay a participant's benefits to an alternate payee in accordance with a state "domestic relations order," if that order is submitted to

the plan and found to meet the detailed requirements that ERISA prescribes for a "qualified domestic relations order" (QDRO). 29 U.S.C. 1056(d)(3).[5] If a valid domestic relations order meeting all of the requirements of Section 1056(d)(3) is determined by the plan fiduciary to be "qualified," then the payee under the QDRO becomes a beneficiary of the plan as well, whether or not otherwise designated as a beneficiary by the participant. 29 U.S.C. 1056(d)(3)(J) and (K). Similarly, ERISA requires that group health plans provide benefits to the child of a participant in accordance with a "qualified medical child support order" that meets detailed statutory requirements. 29 U.S.C. 1169(a) (1994 & Supp. IV 1998). As with a QDRO, a child subject to such an order is considered a beneficiary of the group medical plan. 29 U.S.C. 1169(a)(7). Significantly, although ERISA thus accommodates state domestic relations orders and medical child support orders, such orders are not self-executing in their effect on ERISA plans. The determination whether a state domestic relations order meets the requirements of a QDRO or qualified medical child support order rests with the plan administrator, and benefits are not provided to the alternate payee (of pension plan benefits) or alternate recipient (of medical plan benefits) until the order is found to be qualified. 29 U.S.C. 1056(d)(3)(G) and (H); 29 U.S.C.

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[5] ERISA defines a "domestic relations order" as a judgment, decree, or order that "relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant" and is "made pursuant to a State domestic relations law." 29 U.S.C. 1056(d)(3)(B)(ii). A "qualified domestic relations order" is defined as a domestic relations order that "creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan," 29 U.S.C. 1056(d)(3)(B)(i)(I), and that meets certain substantive requirements spelled out in 29 U.S.C. 1056(d)(3)(C) and (D). See also 29 U.S.C. 1056(d)(3)(B)(i)(II).

1169(a)(5). See generally *Boggs*, 520 U.S. at 846-847 (discussing provisions authorizing payment of benefits pursuant to QDROs and qualified medical child support orders).[6]

The provisions of Section 1056(d)(3) (with respect to QDROs) and Section 1169(a) (with respect to qualified medical child support orders) confirm that the distribution of plan benefits is a central federal concern under ERISA. They also reflect Congress's understanding that the application of ERISA's general rules—*i.e.*, that ERISA plans are to be administered "in accordance with the documents and instruments governing the plan," 29 U.S.C. 1104(a)(1)(D), and that beneficiaries are to be determined by reference to the participant's designation or the terms of the plan, 29 U.S.C. 1002(8)—in the particular context of marital dissolution is a matter to be addressed in ERISA itself. And Congress has expressly provided that state court orders that come within Section 1056(d)(3) and Section 1169(a) are exempted from preemption under Section 514(a). See 29 U.S.C. 1144(b)(7) (1994 & Supp. IV 1998). The clear implications of those provisions are that state domestic relations laws and orders that purport to direct the payment of benefits by an ERISA plan in other circumstances are preempted, and, more generally, that Congress did not intend to leave to the States the creation of exceptions to, or special applications of, the general rule that the determination of beneficiaries is governed by the participant's designation and the plan documents. See generally *Boggs*, 520 U.S. at 854 ("The axis around which ERISA's pro-

[6] Another provision of ERISA, 29 U.S.C. 1055(c)(2), also looks beyond participants' beneficiary designations in order to provide protection to surviving spouses. That provision requires that a spouse consent in writing to certain choices by the participant that would deprive the spouse of the survivor's annuity that is otherwise mandated by 29 U.S.C. 1055(a). See *Boggs*, 520 U.S. at 842 (discussing that provision).

tections revolve is the concepts of participant and beneficiary. When Congress has chosen to depart from this framework, it has done so in a careful and limited manner."); see also *Metropolitan Life Ins. Co.* v. *Pettit*, 164 F.3d 857, 862 (4th Cir. 1998) (reasoning that the QDRO provision constitutes a "clear signal from Congress about what it considers to relate to an ERISA plan" and thus to be exempt from state regulation under Section 514(a)).

2. The state law at issue here, Section 11.07.010 of the Washington Revised Code, cannot be reconciled with ERISA's central purpose of providing for the uniform administration of employee benefit plans. Section 11.07.010 directly, indeed expressly, regulates the payment of benefits under "[a] payable-on-death provision of a[n] * * * employee benefit plan." Wash. Rev. Code Ann. § 11.07.010(5)(a) (West 1998).[7] It "revoke[s]" a participant's designation of his or her spouse as a beneficiary under the plan if the

[7] Arguably, the state statute's express reference to "employee benefit plan[s]" is sufficient, in itself, to warrant preemption as a statute that "refers to," and thus necessarily "relates to," such plans. See *Mackey*, 486 U.S. at 830 (holding that a "state statute's express reference to ERISA plans suffices to bring it within the federal law's preemptive reach"). The Court has observed, however, that a state law that refers to ERISA plans is preempted on that ground if it "acts immediately and exclusively upon ERISA plans" or "the existence of ERISA plans is essential to the law's operation." *Dillingham*, 519 U.S. at 325. Section 11.07.010 does not apply exclusively to employee benefit plans, and the existence of an ERISA plan is not in all instances essential to its operation. The state statute also applies, for example, to the "payable-on-death provision" of a life insurance policy, an annuity or similar contract, and an individual retirement account. Wash. Rev. Code Ann. § 11.07.010(5)(a) (West 1998). But whether or not the express reference to "employee benefit plan[s]" in the state statute is sufficient in itself to require preemption under Section 514(a), that reference makes clear that the state statute's effect on ERISA plans is not merely incidental, as was true of the laws of general applicability that this Court has found not to be preempted. See pp. 11-12 & n.4, *supra*.

participant and the spouse divorce after the designation is made. *Id.* § 11.07.010(2). It purports to control the designation of beneficiaries and the payment of benefits under employee benefit plans, and thus, as explained above, is at the core of Congress's concerns in enacting ERISA and its express preemption provision.

Accordingly, this case does not involve a state law, such as those described in *Travelers*, 514 U.S. at 661, that has "only a tenuous, remote, or peripheral connection with covered plans." Section 11.07.010 does not merely have some "indirect economic effect on choices made by * * * ERISA plans." *Travelers*, 514 U.S. at 659; accord *Dillingham*, 519 U.S. at 334. Nor is Section 11.07.010 a statute of general application, such as a tax statute, that merely "impose[s] some burdens on the administration of ERISA plans." *De Buono* v. *NYSA-ILA Med. & Clinical Servs. Fund*, 520 U.S. 806, 814-816 (1997). To the contrary, Section 11.07.010 has the purpose and effect of "dictat[ing] the choices * * * facing ERISA plans," *Dillingham*, 519 U.S. at 334, on the fundamental question of who is, and who is not, the proper recipient of benefits under the plan.[8]

Section 11.07.010 is thus analogous to one of the state statutes found to be preempted in *Shaw*, 463 U.S. at 97, which "require[d] employers to pay employees specific benefits." It is also analogous to the state statutes found to be preempted in *FMC Corp.* and *Alessi*, which, in effect, directed how the net amount of an employee's benefit was to be calculated. See *FMC Corp.*, 498 U.S. at 58-60 (state anti-

[8] Section 11.07.010 is likewise unlike the general garnishment statute upheld against a preemption challenge in *Mackey*. See 486 U.S. at 831-840. That statute did not purport to dictate the choices made by ERISA plan administrators. It merely provided a mechanism for the collection of money judgments that had been obtained, in proceedings unrelated to employee benefits, against persons who concededly were participants under the terms of an ERISA welfare benefit plan.

subrogation statute); *Alessi*, 451 U.S. at 521-526 (state statute prohibiting offset of workers' compensation benefits against pension benefits); *Travelers*, 514 U.S. at 657-658 (discussing *Shaw*, *FMC Corp.*, and *Alessi*); see also *UNUM Life Ins. Co. of Am.* v. *Ward*, 526 U.S. 358, 366-367 (1999) (noting parties' agreement that state laws concerning payment of benefits under an ERISA plan "relates to" the plan within the meaning of Section 514(a)). State laws directing *who* is to receive benefits under an employee benefit plan "relate to" ERISA plans, within the meaning of Section 514(a), to the same extent as state laws directing *which* benefits are to be provided under such plans or *how* benefits are to be calculated. Section 11.07.010, like the laws in those earlier cases, is therefore expressly preempted under Section 514(a) of ERISA.

II. The Washington Statute Is Also Preempted Because It Conflicts With Provisions Of ERISA And Operates To Frustrate The Objects Of ERISA

Section 11.07.010, in its application to the two ERISA plans in this case, "conflicts with the provisions of ERISA" and "operates to frustrate its objects." *Boggs*, 520 U.S. at 841. Accordingly, aside from whether the state statute "relates to" employee benefit plans within the meaning of Section 514(a), application of the state statute to ERISA plans is preempted under ordinary principles of conflict preemption.

1. Section 11.07.010 conflicts with those provisions of ERISA that, when read in conjunction with the governing plan documents in this case, require that plan benefits be paid to the person designated in writing by the plan

participant. Such a conflict exists with respect to both the pension plan and the life insurance plan.[9]

As discussed above (see pp. 13-14, *supra*), Section 404(a)(1)(D) of ERISA commands the fiduciary of an ERISA plan to "discharge his duties with respect to a plan * * * in accordance with the documents and instruments governing the plan." 29 U.S.C. 1104(a)(1)(D). Section 404(a)(1)(D) necessarily encompasses a fiduciary's determination of the proper beneficiary under an ERISA plan. See *Varity Corp.* v. *Howe*, 516 U.S. 489, 511 (1996) ("[A] plan administrator engages in a fiduciary act when making a discretionary determination about whether a claimant is entitled to benefits under the terms of the plan documents."); *Central States, S.E. & S.W. Areas Pension Fund* v. *Central Transp., Inc.*, 472 U.S. 559, 571-572 (1985) ("ERISA clearly assumes * * * that trustees will take steps to identify all participants and beneficiaries."). That conclusion is confirmed by ERISA's definition of a "beneficiary" as "a person designated by a participant, or by the terms of an employee benefit plan, who is or may become entitled to a benefit thereunder." 29 U.S.C. 1002(8).

The documents governing the two ERISA plans in this case—like the documents governing many such ERISA plans—provide that benefits are to be paid in accordance with the participant's written beneficiary designation. The summary plan description for the pension plan specifically

[9] In its brief amicus curiae in the Washington Supreme Court, the government argued that Section 11.07.010 is expressly preempted by Section 514(a) of ERISA in its application to both pension plans and welfare benefit plans. Pet. App. 56a-60a. That brief also argued that Section 11.07.010 conflicts with ERISA's anti-alienation provision, 29 U.S.C. 1056(d)(1), with respect to pension plans but not to welfare benefit plans, such as the life insurance plan here. See Pet. App. 52a. On further reflection, we have concluded that Section 11.07.010 also conflicts with additional provisions of ERISA that are applicable to both plans.

states that the administrator will recognize only those beneficiaries designated by the participant on a properly filed form; the summary plan description further states that a participant "may not designate or change a beneficiary by using other documents such as divorce decrees, prenuptial agreements, wills or trusts." J.A. 39-40. Similarly, the summary plan description for the life insurance plan provides that the participant will be asked upon enrollment "to designate the person or persons you would like to receive benefits under the [plan] in the event you die while covered," and it specifically directs participants that "you may change your beneficiary designation at any time by contacting the Boeing Group Insurance Office and completing the appropriate form." R. 102; see also J.A. 35.[10] Those written designation provisions are of the precise variety contemplated by ERISA's definition of beneficiary as "a person designated by a participant, or by the terms of an employee benefit plan." 29 U.S.C. 1002(8). There is no dispute that David Egelhoff properly designated petitioner as his beneficiary in accordance with the documents governing both plans. See Pet. App. 3a.

Thus, "[a]lthough ERISA does not say 'pay only the person whose name is on file', it does say that every plan must act 'in accordance with the documents and instruments governing' it, 29 U.S.C. § 1104(a)(1)(D), and th[ese] plan[s] ha[ve] a written-designation rule." *Fox Valley & Vicinity Constr. Workers Pension Fund* v. *Brown*, 897 F.2d 275, 283 (7th Cir.) (en banc) (Easterbrook, J., dissenting), cert. denied, 498 U.S. 820 (1990). Section 11.07.010 effectively

[10] The "documents * * * governing the plan," within the meaning of Section 404(a)(1)(D), include summary plan descriptions. See *Curtiss-Wright Corp.* v. *Schoonejongen*, 514 U.S. 73, 83-84 (1995); see also 29 U.S.C. 1024(b); 29 C.F.R. Pt. 2520, Subpart B (regulations governing summary plan descriptions).

commands that the benefits under an ERISA plan be paid to somebody other than the person whose name is on file and who thus is the proper beneficiary under the terms of the plan. Section 11.07.010 thereby directs an outcome that is contrary to the outcome required by the plan and ERISA. It therefore is preempted.[11]

The federal statutory rule of distributing ERISA benefits in accordance with the plan documents—and thus ordinarily, under an ERISA pension or life-insurance plan, in accordance with a written beneficiary designation—"fulfills the intent of Congress that ERISA plans be uniform in their interpretation and simple in their application." *McMillan* v. *Parrott*, 913 F.2d 310, 312 (6th Cir. 1990). Such rules enable plan participants, beneficiaries, and administrators to identify their rights and responsibilities with certainty. See *Varity Corp.*, 516 U.S. at 502-503; *Curtiss-Wright Corp.* v. *Schoonejongen*, 514 U.S. 73, 83-84 (1995). They thereby "yield simple administration, avoid double liability, and ensure that beneficiaries get what's coming quickly, without the folderol essential under less-certain rules." *Fox Valley*, 897 F.2d at 283 (Easterbrook, J., dissenting) (quoted in *McMillan*, 913 F.2d at 312); see also *Pettit*, 164 F.3d at 864 (invocation of state law to countermand written beneficiary designations "reduce[s] the certainty of plan administration and increase[s] litigation," thereby "allow[ing] state law to escalate the administrative costs that Congress sought to decrease").[12]

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[11] Cf. *Arkansas La. Gas Co.* v. *Hall*, 453 U.S. 571 (1981) (regulated utility may charge only its filed rate, and state law departing from that filed rate is preempted).

[12] The prospect that ERISA plans could incur double liability under state laws such as Section 11.07.010 is a real one. As the court of appeals noted, for example, if respondents had made a proper demand on the administrator of the life insurance plan, respondents could sue to recover the life insurance proceeds from the insurer, even though the insurer had already paid the proceeds to petitioner in accordance with the terms of the plan. Pet. App. 42a-44a & nn.16,18; see Wash. Rev. Code Ann. § 11.07.010(3)(a) (West 1998). Thus, an administrator may potentially be subject to conflicting obligations to pay each of the competing claimants—a situation in which "compliance with both federal and state regulations is a physical impossibility." *Boggs*, 520 U.S. at 844. If the administrator paid the proceeds to petitioner, the administrator could be subject to suit by respondents under state law; and if the administrator paid the proceeds to respondents, the administrator could be subject to suit by petitioner under ERISA. See 29 U.S.C. 1132(a)(1)-(3) (authorizing ERISA plan participants and beneficiaries to sue to "recover benefits due * * * under the terms of the plan," to obtain damages for breaches of fiduciary duty, and to obtain equitable relief to redress statutory violations or "to enforce * * * the terms of the plan").

A federal rule that requires adherence to written beneficiary designations might be regarded by some as too rigid in instances, such as those in this case, where a participant who had an incentive to change his designation died before he actually did so. Even in that situation, though, it cannot be assumed that a plan participant would necessarily have chosen to revoke the designation of the former spouse as beneficiary immediately upon divorce. A participant might, out of feelings of obligation, remorse, or continuing affection, intend that the former spouse remain as beneficiary, at least for the time being. In any event, "whether to have rules (flaws and all) or more flexible standards (with high costs of administration and erratic application) is a decision already made" by Congress and the ERISA plans. *Fox Valley*, 897 F.2d at 284 (Easterbrook, J., dissenting). Section 11.07.010 stands as an obstacle to the effectuation of that decision.[13]

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[13] We do not, however, read Section 404(a)(1) to "enable employers to avoid *any* state law simply be referring to that law in [their] ERISA plan." *Hook* v. *Morrison Milling Co.*, 38 F.3d 776, 785 (5th Cir. 1994) (refusing to give preemptive effect to provision in ERISA welfare plan purporting to waive employee's rights to bring negligence suit).

2. Section 11.07.010, in its application to ERISA pension plans, also conflicts with Section 206(d)(1) of ERISA, 29 U.S.C. 1056(d)(1), which states that "[e]ach pension plan shall provide that benefits provided under the plan may not be assigned or alienated." Section 206(d)(1) was designed "to safeguard a stream of income for pensioners * * * and their dependents" by ensuring that pension funds are not diverted to other persons. *Guidry* v. *Sheet Metal Workers Nat'l Pension Fund*, 493 U.S. 365, 376 (1990). Section 206(d)(1) "is mandatory and contains only two explicit exceptions * * *, which are not subject to judicial expansion." *Boggs*, 520 U.S. at 851. Neither exception is applicable here.[14]

Section 11.07.010 effects an "alienation" and "assignment," by operation of law, of a spouse's pension plan benefits upon divorce from a plan participant. See *Boggs*, 520 U.S. at 851 (noting the regulatory definition of an "assignment or alienation" as "'[a]ny direct or indirect arrangement whereby a party acquires from a participant or beneficiary' an interest enforceable against a plan to 'all or any part of a plan benefit payment which is, or may become, payable to the participant or beneficiary'") (quoting 26 C.F.R. 1.401(a)-13(c)(1)(ii)). The statute "revoke[s]" the former spouse's right to the benefits, Wash. Rev. Code Ann. § 11.07.010(2)(a) (West 1998), thereby alienating the benefits from the recipient designated under the plan. The statute simultaneously assigns the benefits to another person, *i.e.*, the party to whom the benefits would have passed "if the former

[14] The first exception, embodied in 29 U.S.C. 1056(d)(2), allows "any voluntary and revocable assignment of not to exceed 10 percent of any benefit payment," or other assignments executed before the effective date of ERISA, and allows the use of benefits to secure a loan to a participant or a beneficiary. The second exception, embodied in 29 U.S.C. 1056(d)(3)(A), applies to payments of benefits pursuant to a QDRO. See pp. 14-17, *supra* (discussing QDRO provision).

spouse failed to survive the decedent, having died at the time of entry" of the divorce decree. *Ibid.* The statute gives that other person certain rights enforceable against the pension plan. *Id.* § 11.07.010(3)(a) (providing that "[a] payor," *e.g.*, a pension plan, "is liable for a payment or transfer made" to the former spouse after the payor "has actual knowledge of a revocation under this section," although not otherwise).

It is irrelevant for purposes of preemption analysis that the plan participant, David Egelhoff, could have accomplished a similar result, after his divorce from petitioner, by filing an amended beneficiary designation form pursuant to the terms of the pension plan.[15] He did not do so. And state law cannot, consistent with ERISA, act in his stead. Cf. *Arkansas Louisiana Gas Co.* v. *Hall*, 453 U.S. 571, 580-581 (1981).

3. The conflict in this case between ERISA and state law is similar to the conflict in *Boggs*. There, the Court, applying conflict preemption principles, held that ERISA preempted state law that would have allowed the wife of a pension plan participant to transfer by will her community-property interest in undistributed plan benefits. The wife had died before her husband retired, and thus before the various pension benefits were distributed, leaving her interest in those benefits to her husband and sons. The husband remarried, retired, and ultimately died, at which time the sons sought to enforce their asserted state-law interest in the benefits against the second wife. See *Boggs*, 520 U.S. at 836-837.

[15] Section 11.07.010, by its terms, does not apply where a divorce decree "requires that the decedent maintain a nonprobate asset for the benefit of a former spouse or children of the marriage." Wash. Rev. Code Ann. § 11.07.010(2)(b)(ii) (West 1998). It thus would appear not to apply in the circumstances covered by the QDRO provision of ERISA.

The Court initially held that the sons' claim to a portion of the second wife's survivor annuity was preempted, relying principally on 29 U.S.C. 1055, which provides that the spouse of a participant is entitled to a survivor's annuity and that the spouse can waive that entitlement only in a notarized written instrument. *Boggs*, 520 U.S. at 844. The Court then turned to the sons' claim to other pension plan benefits distributed to their father during his retirement. The Court noted that the sons had no right to the plan benefits under ERISA itself because the sons were "neither participants nor beneficiaries" under the plan as those terms are defined in the Act. *Id.* at 848. The Court explicitly declined the sons' invitation to "ignore" ERISA's definition of beneficiary and to permit the use of state law to "create a new class of persons for whom plan assets are to be held and administered." *Id.* at 850. The Court added that its "conclusion that Congress intended to pre-empt [the sons'] nonbeneficiary, nonparticipant interests in the retirement plans is given specific and powerful reinforcement by the pension plan anti-alienation provision"; the Court explained that the first wife's testamentary transfer was "a prohibited 'assignment or alienation'" because, as of the time that the transfer occurred, the sons "would have acquired * * * an interest in [the father's] pension plan at the expense of plan participants and beneficiaries." *Id.* at 851-852.[16]

Similarly, here, Section 11.07.010 "create[s] a new class of persons for whom plan assets are to be held and administered," 520 U.S. at 850—*i.e.*, persons who are neither "participants" in nor "beneficiaries" of the employee benefit plans,

[16] The Court's central rationale in *Boggs*, *i.e.*, that state law cannot create a class of persons for whom ERISA plan benefits are held and administered, 520 U.S. at 850, is equally applicable to all ERISA plans, both pension plans (the only sort of plan at issue in that case) and welfare benefit plans, although that rationale was "reinforce[d]" in *Boggs*, *id.* at 851, by the anti-alienation provision applicable only to the former.

as those terms are defined in ERISA, but who nonetheless are given an enforceable interest under state law in the proceeds of those plans. Moreover, as in *Boggs*, the fact that such persons have asserted that interest against the recipient of the benefits at issue, rather than against the plan itself, does not eliminate the conflict with ERISA. As the Court explained, "[r]eading ERISA to permit nonbeneficiary interests, even if not enforced against the plan, would result in troubling anomalies." *Id.* at 850. For example, the Court observed, "[e]ither pension plans would be run for the benefit of only a subset of those who have a stake in the plan," because fiduciaries' obligations under ERISA run only to participants and beneficiaries, 29 U.S.C. 1104(a)(1), or "state law would have to move in to fill the apparent gaps between plan administration responsibilities and ownership rights, resulting in a complex set of requirements varying from State to State." 520 U.S. at 850-851. Here, as in *Boggs*, "[n]either result accords with the [ERISA] statutory scheme." *Id.* at 851.

4. A number of courts have recognized that ERISA preempts state statutes and court decrees that, like Section 11.07.010, would require, as a consequence of divorce, that plan benefits be paid to someone other than the beneficiary who has been properly designated under the plan. See, *e.g.*, *Pettit*, 164 F.3d at 862-863; *Metropolitan Life Ins. Co.* v. *Pressley*, 82 F.3d 126, 130 (6th Cir. 1996), cert. denied, 520 U.S. 1263 (1997); *MacAnally* v. *Levin*, No. 99CA0120, 2000 WL 328723 (Colo. Ct. App. Mar. 30, 2000). Some of those courts have, however, created federal common law rules, often with reference to the rejected state law, under which benefits are payable to other persons in accordance with perceived public policy or equitable considerations. See, *e.g.*, *Equitable Life Assurance Soc'y of the United States* v. *Crysler*, 66 F.3d 944, 948-950 (8th Cir. 1995); *Brandon* v. *Travelers Ins. Co.*, 18 F.3d 1321, 1325-1326 (5th Cir. 1994),

cert. denied, 513 U.S. 1081 (1995); *Fox Valley*, 897 F.2d at 281.

Those courts' resort to federal common law is misguided. As explained above, ERISA itself supplies the applicable rules of law in this area. Congress has articulated the general rules that all ERISA plans be administered "in accordance with the documents and instruments governing the plan," 29 U.S.C. 1104(a)(1)(D); that the beneficiary of an ERISA plan is the "person designated by a participant, or by the terms of an employee benefit plan," 29 U.S.C. 1002(8); and that benefits under ERISA pension plans are not to be "assigned or alienated" away from participants and their beneficiaries, 29 U.S.C. 1056(d)(1). Congress has also established special applications of those general rules, such as in the provisions for QDROs and qualified medical child support orders, that take account of state laws and orders to the extent, and in the manner, that Congress deemed appropriate. See 29 U.S.C. 1056(d); 29 U.S.C. 1169(a) (1994 & Supp. IV 1998).

Resort to federal common law to create other special applications of, or exceptions to, those statutory rules requiring the payment of ERISA benefits to participants and their designated beneficiaries would be in derogation of ERISA. See *Pressley*, 82 F.3d at 130; *Krishna* v. *Colgate Palmolive Co.*, 7 F.3d 11, 15-16 (2d Cir. 1993) (declining to create a federal common law rule to resolve competing claims for benefits under an ERISA plan); see generally *Guidry*, 493 U.S. at 376 ("[C]ourts should be loath to announce equitable exceptions to legislative requirements or prohibitions that are unqualified by the statutory text.").[17]

[17] The same problems pertain with respect to the use of a constructive trust theory to obtain the benefits. See *Pettit*, 164 F.3d at 864. The assumption underlying such a trust is that the alternate claimant, not the designated beneficiary, was always entitled to the benefits, and thus could have made a direct claim against the plan. Cf. *Harris Trust & Sav. Bank* v. *Salomon Smith Barney Inc.*, 120 S. Ct. 2180, 2189-2190 (2000).

Moreover, in cases involving claims by non-beneficiary former spouses or dependent children, who could have obtained a QDRO to protect their rights to benefits under an ERISA plan, a federal common law right to benefits would "reduce the QDRO provisions to a meaningless footnote." *Pettit*, 164 F.3d at 864. Accordingly, while we do not rule out resort to background legal principles to resolve claims for ERISA benefits that arise in truly unusual circumstances unlikely to have been contemplated by Congress or the drafters of ERISA plans,[18] this case presents no such circumstances.

[18] For instance, it might well be appropriate to consider the well-established legal principle that "[n]o person should be permitted to profit from his own wrong" if a murderer asserted a claim to benefits as the named beneficiary under the victim's ERISA plan. See *Prudential Life Ins. Co.* v. *Tull*, 690 F.2d 848, 849 (4th Cir. 1982) (applying that principle to an insurance policy issued under Servicemen's Group Life Insurance Act); see also Priv. Ltr. Rul. 89-08-063 (Feb. 24, 1989) (applying the principle that a murderer cannot profit from his victim's death in the ERISA context). It might reasonably be argued that an exception for that situation, reflecting a recognized background principle of the law, is implicit in ERISA and the plans governed by it. However, in general, ERISA would operate to preempt application of the specific state law in this area, although such a law might in some circumstances be saved from preemption as an insurance regulation. See *New Orleans Elec. Pension Fund* v. *DeRocha*, 779 F. Supp. 845, 849-850 (E.D. La. 1991) (state slayer statute saved as insurance regulation; alternatively applying federal common law to reach same result). In any event, the Court "need not presently address the legal aspects of extreme fact situations or of instances where the beneficiary has obtained the proceeds through fraudulent or illegal means as, for example, where the named beneficiary murders the insured." *Ridgway* v. *Ridgway*, 454 U.S. 46, 60 n.9 (1981).

CONCLUSION

The judgment of the Supreme Court of Washington should be reversed.

Respectfully submitted.

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No. 99-1529

IN THE

Supreme Court of the United States

DONNA RAE EGELHOFF,
Petitioner,

v.

SAMANTHA EGELHOFF, A Minor, by and through her Natural Parent KATE BREINER, and DAVID EGELHOFF,
Respondents.

On Writ of Certiorari to the Supreme Court of Washington

BRIEF FOR THE NATIONAL COORDINATING COMMITTEE FOR MULTIEMPLOYER PLANS AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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I. PRELIMINARY STATEMENT

The National Coordinating Committee for Multiemployer Plans ("NCCMP")[1] submits this *amicus* brief to urge the Court to reverse the decision of the Supreme Court of Washington in the matter *Egelhoff v. Egelhoff*.[2] In *Egelhoff*, the court held that a Washington statute,[3] which presumes that former spouses of employee benefit plan participants predecease participants upon divorce, is not preempted by the Employee Retirement Income Security Act ("ERISA"),[4] and does not violate ERISA's anti-alienation provision.[5] Parties to this action have unanimously consented to the NCCMP's filing of this *amicus* brief.

The NCCMP's members are multiemployer plans and related international unions, which provide retirement and health and welfare benefits to retirees, active employees, and their beneficiaries, in many different states. Multiemployer plans often provide benefits to participants and beneficiaries residing in multiple states. Consequently, the ability of trustees and fiduciaries to implement uniform administrative processes and procedures is of vital importance to the multiemployer plan community, and to the NCCMP. The NCCMP files this *amicus* brief because the decision below directly conflicts with ERISA's text and purpose, and threatens to seriously impede the ability of multiemployer plan trustees to administer plans in the manner prescribed by Congress.

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[1] Counsel for *Amicus* were the sole authors of this brief. No person or entity other than *Amicus* made a financial contribution to this brief.

[2] 139 Wash.2d 557, 989 P.2d 80 (1999).

[3] R.C.W. § 11.07.010.

[4] 29 U.S.C. § 1001 *et. seq.*

[5] ERISA § 206(d)(1), 29 U.S.C. § 1056(d)(1).

As permitted under ERISA, trustees across the country have set forth in their plan documents how their participants may appropriately designate beneficiaries for those benefits which may be shared or passed on to designated beneficiaries. These provisions permit plan administrators to reference the documents on file with plans, which reflect participants' determinations as to proper beneficiaries of life insurance and pension benefits, when determining to whom specific plan benefits should be paid. The *Egelhoff* decision, unless repudiated by this Court, threatens to undermine such administrative uniformity, and would severely impair the ability of multiemployer plans to provide life insurance and retirement benefits to the designated beneficiaries of deceased plan participants.

Unless the decision below is rejected, the Washington statute at issue would require fiduciaries, in specific instances, to ignore the beneficiary designations of plan participants, and disregard explicit plan provisions, in violation of ERISA's command that fiduciaries administer plans in accordance with the terms of governing plan documents.[6]

Moreover, unless repudiated, the decision below will subject employee welfare and retirement plans to differing, and often conflicting, state laws regarding the appropriate disposition of plan benefits. Plans would thus be required to expend significant financial and administrative resources to assess and comply with state laws that purport to alter beneficiary designations, and to defend against litigation that will inevitably arise as a result of conflicts between state laws and plan provisions. Furthermore, the decision below, unless overruled, will require plans to establish administrative processes and procedures to monitor the marital status of their

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[6] ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D).

participants, and will delay payment of plan benefits while the impact of state laws on beneficiary designations is assessed.

II. STATEMENT OF THE NCCMP's INTEREST

A. Purpose and Interest

The NCCMP is a nonprofit, tax-exempt organization that was formed to participate in the development of employee benefits legislation and government regulations that implement ERISA and other laws affecting multiemployer plans. Currently, more than 240 multiemployer plans and related international unions, located in 37 states, are affiliated with the NCCMP. Their participants and beneficiaries reside throughout the country. The NCCMP is the only national organization devoted exclusively to protecting the interests of the more than nine million workers, retirees, and their families who rely upon multiemployer plans for retirement, health, and other benefits.

The NCCMP's purpose is to ensure an environment in which multiemployer plans may continue their vital role in efficiently providing retirement and welfare benefits to working men and women. The NCCMP's members encompass plans and plan sponsors in every major segment of the multiemployer plan universe. Because of the broad range of experience of the NCCMP's constituent organizations, and the NCCMP's close, ongoing contacts with hundreds of trustees charged with administering multiemployer plans, the NCCMP believes that it is uniquely qualified to represent the interests of the trustees, participants, and beneficiaries of such plans. For this reason, the NCCMP frequently participates as an *amicus curiae* in this Court, as well as in various courts of appeals.

B. Special Features of Multiemployer Plans

Multiemployer plans, whether large or small, provide a variety of benefits that often vary according to the geographic area, craft, employer contribution rate, and other factors. Multiemployer plan benefit packages are, typically, designed by the plans' trustees, rather than negotiated by the employers and unions that participate in the plans. Due to their large size and often decentralized administrative structures, multiemployer plans are administered quite differently from single-employer plans.[7] It is this unique nature of multiemployer plans that causes the NCCMP to be concerned with the Washington Supreme Court's ruling in *Egelhoff*.

Employees in industries that contribute to multiemployer plans (*e.g.*, the construction, shipping, and restaurant industries) often work for multiple employers in a calendar year. Due to their short tenure with any single employer, such employees would usually be ineligible for participation in employee benefit plans, but for the existence of multiemployer plans. Recognizing that transitory employment is an integral feature of industries that contribute to multiemployer plans, many multiemployer benefit plans offer various welfare and retirement benefit packages which include portability provisions that allow participants to continue accruing benefits under plans, even if they work for multiple contributing employers. Consequently, aside from receiving contributions from potentially hundreds, or thousands, of contributing employers in different states, the benefit structures of many multiemployer plans *facilitate* participants' employment with different employers in *different* states.

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[7] Large, multistate, single-employer plans may share some of the benefit delivery features of multiemployer plans.

Morever, large national plans may comprise multiple plan units, which cover specific geographic areas in different states, and furnish a unique set of benefits to potentially tens of thousands of covered participants and beneficiaries in the respective geographic regions. Because multiemployer plans often provide benefits to large participant populations that are geographically dispersed, the uniform administration of such plans across state lines is of significant importance in providing for the timely payment of benefits at relatively low administrative costs. This is especially true with respect to divorced plan participants, who may have children and former spouses in states other than the state of the participant's residence.

The determination of the proper beneficiary of life insurance or pension benefits is currently straightforward: plan officials need only refer to beneficiary designations on file, which reflect participants' choices as to whom benefits are to be distributed, or refer to plan provisions that determine beneficiaries in the absence of participants' designations. Such simplicity allows multiemployer plans with participants and beneficiaries in multiple states to distribute benefits pursuant to a uniform standard. The *Egelhoff* decision threatens to undermine such administrative uniformity, and will, unless overruled, force plans to establish administrative procedures to monitor participants' marital status, and to assess the effect of the Washington law (and other states' laws) on potentially competing claims that participants' spouses, former spouses, and children may have to plan benefits.

For this reason, the NCCMP urges the Court to reverse the decision below.

III. SUMMARY OF ARGUMENTS

The Washington Supreme Court's decision in *Egelhoff* requires that plan fiduciaries disregard the designation of a participant's former spouse as a plan beneficiary, unless such a designation was affirmatively made by the participant following the dissolution of the marriage. The state law at issue in *Egelhoff* effectively overrides certain beneficiary designations and plan provisions, and thus directly conflicts with ERISA's purpose of designating beneficiaries in accordance with the terms of plan documents.[8]

Furthermore, the decision below conflicts with this Court's decision in *Boggs v. Boggs.*[9] Similar to the state law at issue in *Boggs*, the Washington statute allows third parties, who are neither participants nor beneficiaries, to enjoy the proceeds of employee retirement plans by displacement of designated beneficiaries. As the Washington statute creates an alienation of benefits, proscribed by ERISA Section 206(d)(1),[10] the Washington "state law cannot stand." [11]

Even if the Court concludes that the Washington statute does not directly conflict with ERISA, the statute is nonetheless preempted by ERISA Section 514(a),[12] as the statute impermissibly "relates to" and has a "connection with" employee benefit plans.

The court below clearly misinterpreted this Court's holdings concerning the scope of ERISA Section 514, and the

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[8] *See* ERISA § 3(8), 29 U.S.C. § 1002(8); § 206(d)(1), 29 U.S.C. § 1056(d)(1), § 402(b)(4), 29 U.S.C. § 1102(b)(4).

[9] 520 U.S. 833 (1997).

[10] 29 U.S.C. § 1056(d)(1).

[11] *Boggs*, 520 U.S. at 834.

[12] 29 U.S.C. § 1144(a).

ruling below is inconsistent with this Court's decisions in *New York State Conference of Blue Cross & Blue Shield v. Travelers Ins. Co.* (*"Travelers"*),[13] and its progeny.[14] Specifically, by finding that the Washington statute's displacement of participants' beneficiary designations does not have a sufficiently direct impact on ERISA-covered plans, the Washington Supreme Court ignored the very real and obvious fact that displacement of named beneficiaries from their entitlement to plan benefits directly alters the terms and administration of employee benefit plans. *Travelers* clearly and unequivocally holds that state laws that alter the terms or administration of employee benefit plans are preempted by ERISA.[15]

The decision below threatens to seriously impair the uniform administration of multiemployer plans, which often comprise hundreds or thousands of contributing employers, and tens of thousands of participants and beneficiaries who reside in different states. Unless overruled, *Egelhoff* will require multiemployer plan fiduciaries to establish administrative structures to evaluate the effect of each state's laws, for purposes of determining whether state laws override plan participants' otherwise-valid beneficiary designations, and will force plans to expend significant resources to monitor participants' marital status, and to defend against litigation arising from conflicts between state laws and the terms of documents governing retirement and welfare plans.

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[13] 514 U.S. 645 (1995).

[14] *California Div. of Labor Standard Enforcement v. Dillingham Construction, N.A., Inc.*, 519 U.S. 316 (1997); *DeBuono v. NYSA-ILA Medical and Clinical Services Fund, et. al.*, 520 U.S. 806 (1997); *Boggs, supra; UNUM Life Ins. Co. of America v. Ward*, 526 U.S. 358 (1999).

[15] *Travelers*, 514 U.S. at 658. *See also, UNUM Life Ins. Co. of America v. Ward*, 526 U.S. 358, 378-79 (1999).

As the decision below would subject employee benefit plans to a myriad of potentially conflicting state laws that directly impact the administration of plans, and would thereby undercut Congress's goal that plans be administered uniformly across state lines, the NCCMP urges the Court to reverse the judgment of the Washington Supreme Court.

IV. ARGUMENT

A. The Washington Statute Violates Congress's Intent that Employee Benefit Plans be Subject to a Uniform Body of Law.

This Court has recognized that in enacting ERISA's preemption provision, Congress sought to promote the "nationally uniform administration of employee benefit plans." [16] ERISA Section 514 [17] serves:

> [T]o ensure that plans and plan sponsors would be subject to a uniform body of benefits law; *the goal was to minimize the administrative and financial burden of complying with conflicting directives among States or between States* and the Federal Government . . . , [and to prevent] the potential for conflict in substantive law . . . requiring the tailoring of plans and employer conduct to the peculiarities of the law of each jurisdiction.[18]

"The basic thrust of the preemption clause . . . [is] to avoid a multiplicity of regulation in order to permit the nationally uniform administration of employee benefit plans." [19] ERISA Section 514 thus reflects "Congress's intent to establish the

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[16] *Travelers*, 514 U.S. at 646.

[17] 29 U.S.C. § 1144(a).

[18] *Travelers*, 514 U.S. at 656-57 (*quoting Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 142 (1995) (emphasis added)).

[19] *Id.* at 657.

regulation of employee . . . benefit plans 'as exclusively a federal concern.'" [20]

1. The Decision Below Conflicts With This Court's Ruling in *Boggs*.

In holding that the Washington statute does not alienate retirement plan benefits, the court below misconstrued the effect of this Court's decision in *Boggs v. Boggs* ("*Boggs*").[21] In *Boggs*, the Court held that ERISA preempts state community property laws that purport to allow a nonparticipant former spouse to transfer, by testamentary instrument, his or her interest in a participant's pension benefits. The Court ruled that ERISA's anti-alienation provision [22] prohibits the application of state laws that would allow a "nonbeneficiary, nonparticipant" [23] to have an enforceable interest in a pension plan's benefits. As *Boggs* noted, an assignment or alienation occurs whenever a third party acquires any direct or indirect right or interest to benefits payable under a plan.[24] Importantly, the Court specifically recognized that its ruling in *Boggs* would "affect . . . the right to make claims or assert interests based on the law of any State, whether or not it recognized community property." [25]

By its terms, ERISA carefully defines the class of individuals eligible for plan benefits by reference to the terms

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[20] *Id.* (*quoting Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 523 (1981)).

[21] 520 U.S. 833 (1997).

[22] ERISA § 206(d)(1), 29 U.S.C. 1056(d)(1).

[23] *Boggs*, 520 U.S. at 851.

[24] *Id.* (citing 26 C.F.R. § 1.401(a)-13(c)(1)(ii)).

[25] *Id.* at 840.

of individual plan documents,[26] rather than state laws.[27] ERISA defines a "beneficiary" solely as "a person *designated by a participant, or by the terms of an employee benefit plan, who is or may become entitled to a benefit thereunder*," [28] and therefore does not, with the limited exceptions of Qualified Domestic Relations Orders ("QDROs") and Qualified Medical Child Support Orders ("QMCSOs"), permit reference to state laws for purposes of establishing benefit eligibility, unless permitted by the plan.[29] As the Court noted in *Boggs*, "[w]hen Congress has chosen to depart from the . . . framework [of protecting participants and beneficiaries]," by exempting state domestic relations laws from the parameters of ERISA's anti-alienation and preemption provisions, with respect to QDROs and QMCSOs, "it has done so in a careful and limited manner." [30] *Boggs* unequivocally holds that the very narrow and limited QDRO exception reflects Congress's desire to specify the *only* circumstance when nonparticipants and nonbeneficiaries may assert rights with respect to pension

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[26] *See* ERISA § 402(b)(4), 29 U.S.C. § 1102(b)(4) (requiring that every employee benefit plan specify the basis upon which payments may be made to and from the plan); ERISA § 3(7), 29 U.S.C. § 1002(7) (defining participants eligible for plan benefits as individuals who are, or who may become, eligible for benefits under an employee benefit plan), and ERISA § 3(8), 29 U.S.C. § 1002(8) (defining beneficiaries eligible for plan benefits).

[27] *Boggs v. Boggs*, 520 U.S. 833, 850-51 (1997). *See also, e.g., Curtiss-Wright Corp. v. Schoonejongen*, 514 U.S. 73, 78 (1995) ("Employers and other plan sponsors are generally free under ERISA, for any reason at any time, to adopt, modify, or terminate welfare plans"); *Lockheed Corp. v. Spink*, 517 U.S. 882, 890 (1996) (same); *Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 443 (1999) (same).

[28] ERISA § 3(8), 29 U.S.C. § 1002(8) (emphasis added).

[29] *Boggs*, 520 U.S. at 850-54.

[30] *Id.* at 854.

plan benefits,[31] thus preempting the field in which states may regulate.

The unmistakable effect of the Washington statute is to nullify beneficiary designations, codified in plan documents or elected by plan participants, insofar as the designated beneficiary is the former spouse of a plan participant. Indeed, the court below acknowledged that the statute " . . . invalidates [the] designation of a former spouse as beneficiary of a non-probate asset by creating the legal fiction that the spouse predeceased the now-deceased owner." [32] However, *Boggs* recognized that ERISA's anti-alienation provision is mandatory with respect to pension plans, and is "not subject to judicial expansion." [33]

Moreover, the Washington statute permits participants to use state laws, such as divorce laws, to displace designated beneficiaries of plan benefits, *without* notifying plans of changes in beneficiary designations. The absence of notice as to changes in beneficiary designations imposes substantial administrative and financial burdens on plans, inasmuch as plans will be faced with competing claims for benefits, and will likely be forced to either interplead retirement and/or life insurance proceeds, or be named as defendants in lawsuits filed by claimants to such proceeds. Under either scenario, plans will be subject to "complex, expensive, and time-consuming litigation. Congress could not have intended that pension benefits from pension plans would be given to . . . attorneys for this purpose." [34] Unlike the payment of benefits pursuant to QDROs, which simply require plans to determine

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[31] *Id.*

[32] *Egelhoff v. Egelhoff*, 139 Wash.2d 557, 578 (1999).

[33] *Id. See also Guidry v. Sheet Metal Workers National Pension Fund*, 493 U.S. 365 (1990); ERISA § 206(d)(1), 29 U.S.C. § 1056 (d)(1).

[34] *Boggs*, 520 U.S. at 853.

whether state domestic relations orders satisfy the minimum criteria set forth in ERISA,[35] *without* determining the factual or legal bases for the orders' issuance,[36] changes in beneficiary designations pursuant to state laws require that plans investigate participants' marital and familial status, establish the bases for the competing benefit claims, and opine as to the legal merits of such claims.[37] Such a result is incompatible with ERISA's express goal of providing *designated* beneficiaries with a stream of income. As fiduciaries are required to administer plans in accordance with their governing plan documents,[38] state laws that undermine the strength of plan documents conflict with ERISA's goal that plans be administered in accordance with their clear terms.

To the extent that the Washington statute nullifies beneficiary designations made in accordance with the terms of ERISA plans, the Washington statute clearly conflicts with ERISA's definition of a beneficiary,[39] ERISA's requirement that plans specify to whom benefits may be paid,[40] and ERISA's anti-alienation provision.[41] As such, the Washington statute conflicts with ERISA's objectives of

[35] RISA § 206(d)(3)(C)-(D), 29 U.S.C. § 1056(d)(3)(C)-(D).

[36] United States Department of Labor Advisory Opinion 92-17, *available at* 1992 ERISA LEXIS 18 (August 21, 1992).

[37] Alternatively, plans could routinely interplead life insurance or pension plan benefits, thereby incurring substantial legal fees.

[38] ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D).

[39] ERISA § 3(8), 29 U.S.C. § 1002(8).

[40] ERISA § 402(b)(4), 29 U.S.C. § 1102(b)(4).

[41] ERISA § 206(d)(1), 29 U.S.C. § 1056(d)(1).

providing *designated* beneficiaries with plan benefits,[42] and must therefore be preempted.

2. The Washington Statute Conflicts with ERISA's Anti-Alienation Provision.

State laws that displace named beneficiaries from benefits available under the terms of a plan are inconsistent with ERISA's goal of protecting participants' and beneficiaries' interests in plans. *Boggs* noted that one of the principles underlying ERISA's enactment was to "protect plan *participants and beneficiaries*," [43] and found that "[t]he axis around which ERISA's protections revolve is the concept of *participant and beneficiary*." [44] Indeed, *Boggs* held that "[i]t would be inimical to ERISA's purposes to permit [third party] recipients to acquire a competing interest in undistributed pension benefits, which are intended to provide a stream of income to *participants and their beneficiaries*." [45]

The court below erroneously concluded that the Washington statute does not conflict with ERISA's anti-alienation provision because the statute "does not impede the plan administrator's obligation to pay under the terms of the plan documents." [46] The mere fact that the Washington statute attempts to nullify a beneficiary designation through the legal fiction that a former spouse predeceases a plan participant is irrelevant, however, since the nullification's *effect* is the

[42] *Boggs*, 520 U.S. at 850-51.

[43] *Id.* at 845 (emphasis added).

[44] *Id.* at 854 (emphasis added).

[45] *Id.* at 852 (emphasis added).

[46] *Egelhoff v. Egelhoff*, 139 Wash.2d 557, 579 (1999).

distribution of plan assets to nonparticipants and nonbeneficiaries.[47]

The consequence of the Washington statute is the same as that of the community property law at issue in *Boggs*. The Washington statute purports to transfer, to nonparticipants and nonbeneficiaries, interests in plan benefits that are, by the terms of documents and instruments governing ERISA-covered plans, designated for distribution to specified beneficiaries. Such a transfer of interests is impermissible under *Boggs*, inasmuch as:

> Reading ERISA to permit *nonbeneficiary* interests [in a pension plan], even if not enforced against the plan, would result in troubling anomalies. Either pension plans would be run for the benefit of only a subset of those who have a stake in the plan, or State law would have to move to fill in the apparent gaps between plan administration responsibilities and ownership rights, resulting in a complex set of requirements varying from State to State. *Neither result accords with [ERISA].*[48]

The Washington statute directly conflicts with ERISA's anti-alienation provision. In light of *Boggs'* holding that in the face of "a direct conflict between [a] state law and the provisions and objectives of ERISA, the state law cannot stand,"[49] the Court should reverse the decision of the Washington Supreme Court.

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[47] To determine whether a state law has an impermissible connection with ERISA-covered plans, courts look not only to ERISA's objectives as a guide to the scope of state law that Congress understood would survive preemption, but also "*to the nature of the effect of the state law on ERISA plans.*" *California Div. of Labor Standards Enforcement v. Dillingham Construction, N.A.*, 519 U.S. 316, 325 (1997) (emphasis added).

[48] *Boggs*, 520 U.S. at 850-51(emphasis added).

[49] *Id.* at 844.

3. Compliance with the Washington Statute Requires that Fiduciaries Violate ERISA's Statutory Mandate that Plans Be Administered in Accordance with Plan Documents.

To the extent that the Washington statute nullifies beneficiary designations either mandated by the terms of an employee benefit plan, or elected by plan participants pursuant to plan provisions, a fiduciary's distribution of plan benefits to a third party, as required by the Washington statute, would directly conflict with ERISA's command that fiduciaries administer a plan "in accordance with the documents and instruments governing the plan. . . ."[50]

As ERISA does not, with the limited exception of surviving spouse annuity provisions, designate beneficiaries of plan proceeds, plan sponsors and multiemployer plan trustees must adopt plan provisions detailing to whom pension and welfare benefits may be distributed, to which fiduciaries must adhere in the administration of the plan. To facilitate fiduciaries' compliance with plan provisions, Congress enacted ERISA Section 502(a)(1)(B),[51] providing plan participants and beneficiaries with a cause of action to "recover benefits due . . . under the terms of [a] plan . . . ."[52] Moreover, Congress imposed *personal liability* on fiduciaries who disregard plan provisions, or otherwise violate any of ERISA's fiduciary obligations.[53]

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[50] ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D).

[51] 29 U.S.C. § 1132 (a)(1)(B).

[52] *Id.*

[53] ERISA § 409(a), 29 U.S.C. § 1109(a), provides, in pertinent part, that:

> Any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by [Title I of ERISA] shall be *personally liable* to

Considering that the Washington statute nullifies a participant's designation of a former spouse as the beneficiary of plan benefits, simultaneous compliance with the Washington statute and ERISA Section 404(a)(1)(D) is impossible, as the Washington statute requires that a fiduciary disregard beneficiary designations mandated by terms of a plan. Consequently, unless the decision below is reversed, plan fiduciaries face the Hobson's choice of either (1) complying with the Washington statute, subjecting themselves to personal liability for violating ERISA Section 404(a)(1)(D), or, (2) providing benefits in accordance with the terms of governing plan documents, and facing liability under state law.

Compliance with the Washington statute frustrates ERISA's mandate that the administration of plans be in conformity with their governing plan documents. As such, the Washington statute conflicts with ERISA, and should be preempted.[54]

B. The Washington Statute "Relates To," and Has a "Connection With," Employee Benefit Plans, Triggering Preemption Under ERISA Section 514(a).

Even if the Court finds that the Washington statute does not *directly* conflict with ERISA, it nonetheless alters the terms and administration of employee benefit plans, and is therefore preempted by ERISA Section 514.

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make good to such plan any losses to the plan resulting from such breach. . . .

(Emphasis added).

[54] *Boggs*, 820 U.S. at 844.

1. The Decision Below Misconstrues This Court's Decision in *Travelers*.

The Washington Supreme Court's conclusion that the Washington statute is not preempted by ERISA Section 514 is largely based upon the court's flawed interpretation of this Court's decision in *New York State Conference of Blue Cross & Blue Shield v. Travelers Ins. Co.*[55] Although the *Egelhoff* court was correct that the *Travelers*' decision represented a departure from textual literalism with respect to ERISA Section 514,[56] *Egelhoff* nonetheless disregarded *Travelers'* admonition that, in interpreting Section 514, courts should look to Congress's objectives "as a guide to the scope of the state law that Congress understood would survive" preemption.[57]

While *Travelers* held that state-imposed surcharges on hospital bills covered by commercial insurers were not preempted, as the surcharges had only an indirect economic impact on employee benefit plans, and were outside the scope of traditional state laws that Congress intended to preempt, the Court nonetheless reaffirmed its previous rulings that state laws that mandate benefit structures, alter plan administration, or provide plan participants and beneficiaries with alternate civil enforcement mechanisms,[58] ". . . relate to ERISA plans, triggering preemption." [59]

In distinguishing the surcharges at issue in *Travelers* from other laws that the Court previously found were subject to preemption, the Court specifically reaffirmed its ruling in

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[55] 514 U.S. 645 (1995).

[56] *Egelhoff v. Egelhoff*, 139 Wash.2d at 557-568 (1999).

[57] *Travelers*, 514 U.S. at 656.

[58] *Id.* at 658.

[59] *Id.* (*citing Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133 (1995)).

FMC Corp. v. Holliday ("*Holliday*"),[60] which held that state antisubrogation laws "relate to" ERISA plans, and are therefore preempted. Specifically, *Travelers* noted with approval *Holliday's* holding that antisubrogation laws are preempted because they prohibit plans from structuring benefits in a manner requiring reimbursement in the event of third-party recoveries, and prevent multistate plans from providing uniform benefits to all plan participants.[61]

2. The Washington Statute Directly Impacts, and Alters, the Administration of Employee Benefit Plans.

Similar to the antisubrogation law at issue in *Holliday*, the Washington statute requires plans to pay benefits in a manner contrary to the terms of their governing plan documents, and contrary to the manner in which plans are administered in other states. Unless repudiated by this Court, *Egelhoff* would subject plans to a myriad of different, and potentially conflicting, state laws that purport to define plan beneficiaries, thereby "requiring the tailoring of plans and employer conduct to the peculiarities of the law of each jurisdiction," [62] which *Travelers* specifically prohibits.[63]

Unlike state-imposed surcharges on commercial insurers, the Washington statute directly and immediately impacts employee benefit plans by superceding plan document provisions concerning the designation of beneficiaries, and overriding participants' designations of former spouses as

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[60] 498 U.S. 52 (1990).

[61] *Travelers*, 514 U.S. at 657-58 (emphasis added) (*quoting Holliday, supra*, at 60).

[62] *Id.* at 656-57 (*quoting Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 142 (1995)).

[63] *Id.*

beneficiaries.[64] Moreover, the Washington statute forces plans to establish administrative procedures to monitor participants' marital status, and to assess the effect of the Washington law on potentially competing claims that participants' spouses, former spouses, and children may have to plan benefits. Indeed, a number of federal appellate courts have held, even *after Travelers*, that state laws that purport to displace named beneficiaries from their entitlement to plan benefits sufficiently "relate to" employee benefit plans as to fall within the scope of ERISA preemption.[65]

3. The Washington Statute is Not a State Law of General Application, and Provides Individuals with Substantive Rights Against Plans.

It is critical to note that unlike "lawsuits against ERISA plans for run-of-the-mill state law claims such as unpaid rent, failure to pay creditors, . . . torts committed by an ERISA plan" [66] or general state statutes that permit the garnishment

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[64] As described above, to accomplish its purpose, the Washington statute requires that fiduciaries violate their fiduciary obligations to administer plans in accordance with governing plan documents, thereby subjecting fiduciaries to personal liability under ERISA.

[65] *Metropolitan Life Ins. Co. v. Pettit*, 164 F.3d 857, 862 (4th Cir. 1998) ("designating the beneficiary of an ERISA life insurance plan sufficiently relates to a plan to come within the scope of [ERISA's] preemption clause"); *Metropolitan Life Ins. Co. v. Pressley*, 82 F.3d 126, 129 (6th Cir. 1996) ("a designation of beneficiaries has a connection with or reference to an ERISA plan, preempting state law"). *See also, e.g., Mattei v. Mattei*, 126 F.3d 794, 809 (6th Cir. 1997), *cert. denied*, 523 U.S. 1120 (1998) (property awards under state law that do not constitute QDROs "must fall before conflicting designations of ERISA beneficiaries"); *Metropolitan Life Ins. Co. v. Marsh*, 119 F.3d 415, 420 (6th Cir. 1997) (citing *Boggs v. Boggs*, ERISA preempts state laws that purport to displace designated beneficiaries from their entitlement to plan benefits).

[66] *Mackey v. Lanier Collections Agency*, 486 U.S. 825, 833 (1988).

of participants' welfare plan benefits, which are not preempted by ERISA,[67] the Washington law substantively impacts the terms and administration of employee welfare and pension plans in a manner proscribed by ERISA.

In contrast to the general garnishment statute upheld by this Court in *Mackey v. Lanier Collections Agency*,[68] which was a procedural mechanism to enforce judgments against *welfare* plan participants, the Washington statute affords nonparticipants and nonbeneficiaries with *substantive* rights with respect to employee welfare *and pension* plans.[69] Indeed, the statute provides a cause of action against former spouses who are designated as plan beneficiaries, and plans themselves. Additionally, the statute provides third parties with relief and recovery in regard to welfare and pension plan benefits designated for distribution to former spouses, and clearly creates the rule of decision, and affixes liability, in any case that may arise concerning the disposition of plan benefits to former spouses of plan participants.[70]

As the Washington statute invests third parties with substantive rights against plans and plan beneficiaries, and creates the rule of decision with respect to the disposition of plan benefits, thereby affixing liability, the statute is *not* a general or procedural state law similar to that upheld in *Mackey*.[71] Consequently, the Washington statute is preempted by ERISA.

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[67] *Id.*

[68] *Id.* at 836-37.

[69] It is important to note that *Mackey* specifically held that ERISA § 206(d)(1) prohibits the alienation of pension plan benefits, even by operation of a general state garnishment statute. *Id.*

[70] *See id.*, at n. 10.

[71] *Id.*

4. *UNUM* Requires Preemption of the Washington Statute.

This Court has held, even *after Travelers*, that state laws which alter the administration of employee benefit plans are preempted. This Court's decision, in *UNUM Life Ins. Co. of America v. Ward* ("*UNUM*"),[72] confirms that the Washington statute at issue in *Egelhoff* impermissibly "relates to" employee benefit plans, and is therefore preempted.

In *UNUM*, the Court held that California's "*Elfstrom* rule," which deemed the plan sponsor of an insured employee benefit plan as the insurer's agent, was preempted by ERISA Section 514. Finding that the *Elfstrom* rule was a state law that affected "not merely the plan's bookkeeping obligations regarding to whom benefit checks must be sent, but [also] regulate[d] the basic services that a plan may or must provide . . . [,]" [73] the Court ruled that the *Elfstrom* rule would have a "marked effect on plan administration," [74] and was therefore preempted by ERISA.[75]

The Washington statute at issue in *Egelhoff* has a far greater, and more drastic, impact on plan administration than the *Elfstrom* rule. The Washington statute *mandates* to whom plans may pay benefits, by *nullifying* plan document provisions or beneficiary designations that would otherwise permit participants' former spouses to receive benefits. As state laws deeming a plan sponsor to be an insurer's agent are preempted, due to their "marked effect on plan administration,"[76] logic dictates that the Washington statute,

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[72] 526 U.S. 358 (1999).

[73] *Id.* at 379.

[74] *Id.*

[75] *Id.*

[76] *Id.*

with the far more drastic effect of displacing named beneficiaries from their entitlement to plan benefits, *must* be similarly preempted.

5. The Characterization of the Washington Statute as an Exercise of Traditional State Police Power Does Not Alter the Preemption Analysis.

In concluding that the Washington statute was not subject to ERISA preemption because the statute represented an exercise of Washington's historic police powers regarding domestic relations, the *Egelhoff* court misconstrued this Court's holdings in *Travelers*, and subsequent cases,[77] as to the scope of state laws that Congress intended to save from preemption.

While *Travelers* instructs that courts should begin a preemption analysis with the "presumption that ERISA did not intend to supplant" state law,[78] this Court has nonetheless held that when state laws conflict with specific provisions of ERISA, or would frustrate ERISA's objectives, the state law is preempted.[79] For example, in *Boggs*,[80] the Court found that even though "[s]tate community property laws, many of ancient lineage, . . . 'are not lightly to be abrogated or tossed aside[,]'" [81] such laws are nonetheless preempted to the extent

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[77] *California Div. of Labor Standard Enforcement v. Dillingham Construction, N.A., Inc.*, 519 U.S. 316 (1997); *DeBuono v. NYSA-ILA Medical and Clinical Services Fund, et. al.*, 520 U.S. 806 (1997); *Boggs v. Boggs*, 520 U.S. 833 (1997); *UNUM Life Ins. Co. of America v. Ward*, 526 U.S. 358 (1999).

[78] *Dillingham Construction, N.A., Inc., supra*, 519 U.S. at 331-32.

[79] *Boggs v. Boggs*, 520 U.S. 833 (1997).

[80] *Id.*

[81] *Id.* at 840 (*quoting* 1 W. de Funiak, *Principles of Community Property* 11 (1943)).

that they attempt to confer rights with respect to retirement benefits on nonparticipants and nonbeneficiaries.[82]

Applying *Boggs* to the statute at issue in *Egelhoff*, the mere fact that the Washington statute is a domestic relations law that is otherwise within the province of Washington's traditional police powers, does not shield the law from preemption, insofar as the statute's assignment of retirement plan benefits to nonparticipants and nonbeneficiaries conflicts with ERISA's provisions and objectives.[83]

V. CONCLUSION

The Washington statute impermissibly alienates retirement plan benefits, and requires that multistate employee benefit plans structure all benefit payments in accordance with the Washington statute, or adopt different payment formulae for participants and beneficiaries inside and outside of the State of Washington. The statute thus exercises a direct and substantive impact on the administration of employee benefit plans, and cannot survive ERISA preemption, even under *Travelers*.[84] Indeed, this Court has previously held that state laws with similar impact are preempted.[85] As the Court noted in *Shaw v. Delta Airlines*,[86] requiring plan sponsors and fiduciaries to satisfy the varied, and perhaps conflicting,

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[82] *Id.* at 851-52.

[83] While *Boggs* specifically addressed the applicability of community property laws to ERISA plans, the Court noted that its decision " . . . will affect as well the right to make claims or assert interests based on the law of any State, whether or not [the State] recognizes community property." *Id.* at 840.

[84] *Travelers*, 514 U.S. at 658.

[85] *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504 (1981). *See also Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 10-11 (1987).

[86] 463 U.S. 85, 105 (1983).

requirements of state laws would impair the uniform administration of employee benefit plans and produce considerable inefficiencies, which Congress, through the enactment of ERISA Section 514, sought to prevent:

If *Egelhoff* is affirmed, its impact on multiemployer plans would be particularly acute, as plan participants and beneficiaries may reside in many different states.[87] Multiemployer plans would run the risk of being subject to conflicting laws in different states with respect to third parties who would, but for state laws, be ineligible for benefits. Should the court uphold *Egelhoff*, multiemployer plans, and multistate single-employer plans, would be compelled to administer their plans according to the jurisdiction in which plan participants, or their current or former spouses, marry, divorce, or reside.

As Congress enacted ERISA's preemption provision to ". . . avoid a multiplicity of regulation in order to permit the *nationally uniform administration* of employee benefit plans[,]" [88] the Court's reversal of *Egelhoff* is necessary to uphold Congress's goal of administrative uniformity.

The NCCMP therefore respectfully urges the Court to reverse the judgment of the Washington Supreme Court.

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[87] Moreover, multiemployer plans would bear the additional burden of establishing the applicable state law that governs disposition of conflicting benefit claims, if, for example, a participant was married and worked in one state, obtained a divorce from his or her spouse in a different state, and eventually retired elsewhere.

[88] *Travelers*, 514 U.S. at 657 (emphasis added).

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No. 99-1529

IN THE
SUPREME COURT OF THE UNITED STATES

DONNA RAE EGELHOFF,

Petitioner,

v.

SAMANTHA EGELHOFF, A MINOR, BY AND THROUGH HER NATURAL PARENT KATE BREINER, AND DAVID EGELHOFF,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WASHINGTON

BRIEF *AMICUS CURIAE* OF AARP IN SUPPORT OF NEITHER PARTY

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Petitioner,

v.

SAMANTHA EGELHOFF, A MINOR, BY AND THROUGH HER NATURAL PARENT KATE BREINER, AND DAVID EGELHOFF,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WASHINGTON

BRIEF *AMICUS CURIAE* OF AARP IN SUPPORT OF NEITHER PARTY

INTEREST OF *AMICUS CURIAE*[1/]

AARP is a nonprofit membership organization of more than 34 million persons age 50 or older that is dedicated to addressing the needs and interests of older Americans. AARP seeks through education, advocacy and service to enhance the quality of life for all by promoting independence, dignity and purpose. As a method of promoting independence, AARP attempts to foster the economic security of individuals as they

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[1/] No counsel for any party authored any portion of this brief. No party other than this *amicus curiae*, their members, or their counsel made a monetary contribution to the preparation or submission of this brief.

age by seeking to increase the availability, security, equity, and adequacy of public and private pension, health, disability, and other employee benefits.[2]

AARP's members and other participants and beneficiaries in private, employer-sponsored employee benefit plans rely on the Employee Retirement Income Security Act (ERISA) to protect their rights under those plans. ERISA's protections, and the ability to enforce those protections, are of vital concern to older workers, retirees and their designated beneficiaries, since the quality of their lives depends heavily upon the security and amount of their pension and welfare benefits. State beneficiary designation laws, like the law from Washington State, take control from participants as to whom to leave their benefits, instead of allowing participants to follow their plan's rules and make their own designation. Thus, the decision in this case will have a direct and vital bearing on the economic security of AARP's members and other older Americans. In light of the significance to its members of the issues presented by this case, AARP respectfully submits this brief *amicus curiae*.[2]

SUMMARY OF ARGUMENT

ERISA preemption analysis is no different from any other preemption analysis. *John Hancock Mutual Life Ins. Co. v. Harris Trust and Savings Bank*, 510 U.S. 86, 99 (1993). Any state law that directly conflicts with a federal law, either on its

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[2] As part of its advocacy efforts to ensure, to the greatest extent possible, that participants and beneficiaries receive the benefit of ERISA's protections, AARP has participated as *amicus curiae* in numerous cases involving the breadth of ERISA's preemption clause. *See, e.g., UNUM Life Ins. Co. v. Ward*, 526 U.S. 358 (1999); *Boggs v. Boggs*, 520 U.S. 833 (1997); *California Division of Labor Standards Enforcement v. Dillingham Construction*, 519 U.S. 316 (1997); *John Hancock Mutual Life Ins. Co. v. Harris Trust & Savings Bank*, 510 U.S. 86 (1993).

[2] The written consents of the parties have been filed with the Clerk of the Court pursuant to Supreme Court Rule 37.3.

face or in application, must be preempted because it would frustrate Congress' purpose in enacting the federal law. *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). Through provisions in ERISA as amended by the Retirement Equity Act, Congress established a detailed procedure for receipt and distribution of pension benefits. S. REP. NO. 98-575 at 12 (1984), *reprinted in* 1984 U.S.C.C.A.N. 2547, 2558. Accordingly, state laws that conflict with the substantive provisions of ERISA by regulating how pension benefits are to be paid and by creating specific requirements concerning distribution of pension benefits must be preempted. *E.g., Boggs v. Boggs*, 520 U.S. 833 (1997); *District of Columbia v. Greater Washington Board of Trade*, 506 U.S. 125 (1992); *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 739 (1985). Washington State's beneficiary designation law should be conflict preempted for pension benefits.

The primary objective of ERISA is to protect participants and beneficiaries. *See Boggs v. Boggs*, 520 U.S. at 845; ERISA § 1001(b), 29 U.S.C. § 2(b). And, Congress enacted ERISA's preemption clause to eliminate the threat of conflicting and inconsistent state and local regulation in order to promote the uniform administration of employee benefit plans. *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.* ("*Travelers*"), 514 U.S. 645, 655-61 (1995). Accordingly, pursuant to *Travelers*, three types of state laws are always preempted: (1) laws that mandate employee benefit structures or their administration; (2) laws that bind employers or plan administrators to particular choices or preclude uniform administrative practice, thereby functioning as a regulation of an ERISA plan itself; or (3) laws providing alternate enforcement mechanisms for employees to obtain ERISA plan benefits. *See Travelers*, 514 U.S. at 658; *Arizona State Carpenters Pension Trust Fund v. Citibank*, 125 F.3d 715, 723 (9th Cir. 1997); *Coyne & Delany Co. v. Selman*, 98 F.3d 1457, 1468 (4th Cir. 1996). In this instance, protection of participants and their beneficiaries would be decreased if this state law is not preempted because participants could not decide to whom their benefits should be paid. Moreover, Washington State law not only mandates certain administrative practices, but also precludes uniform administrative practices by requiring

employee benefit plans to comply with designated beneficiary statutes in all 50 states. On this basis alone, Washington State's designated beneficiary law relates to employee pension and welfare benefit plans and should be preempted.

Even if the Court determines that the Washington State law does not fall within one of the categories of preempted state laws, because the Washington State law is a law of general application, whether it is preempted turns on the question of whether the relationship involved is one which is regulated by ERISA. ERISA should preempt state law claims as to those relationships which it regulates comprehensively (*e.g.*, between plan and plan participant, plan and employer, plan and trustee). *See Arizona State Carpenters Pension Trust Fund v. Citibank*, 125 F.3d at 724; *Coyne & Delany Co. v. Selman*, 98 F.3d at 1468. In this case, Washington State's designated beneficiary law regulates the relationship between the plan and the plan participant, that is, who should receive the benefits earned by the plan participant. Consequently, ERISA must preempt Washington's designated beneficiary statute because it relates to employee pension and welfare benefit plans. The decision below should be reversed.

ARGUMENT

I. WASHINGTON STATE'S DESIGNATED BENEFICIARY LAW MUST BE PREEMPTED BECAUSE IT DIRECTLY CONFLICTS WITH ERISA'S PENSION DISTRIBUTION SCHEME.

A. If State Law Conflicts with the Provisions of ERISA or Operates to Frustrate ERISA's Objectives, The State Law Must Be Preempted.

ERISA preemption analysis follows traditional preemption analysis. *John Hancock Mutual Life Ins. Co. v. Harris Trust and Savings Bank*, 510 U.S. at 99 ("[W]e discern no solid basis for believing that, Congress, when it designed ERISA, intended fundamentally to alter traditional preemption analysis."). "'[T]he purpose of Congress is the ultimate touchstone of preemption analysis.'" *Cipollone v. Liggett Group, Inc.*, 505

U.S. 504, 516 (1992) (*quoting Malone v. White Motor Corp.*, 435 U.S. 497, 504 (1978) (*quoting Retail Clerks v. Schermerhorn*, 375 U.S. 96, 103 (1963))); *see* U.S. CONST. art. VI, cl. 2. Under traditional preemption analysis, any state law that directly conflicts with a federal law, either on its face or in application, must be preempted because it would frustrate Congress' purpose in enacting the federal law. *See Rice v. Santa Fe Elevator Corp.*, 331 U.S. at 230.

Following this traditional analysis, the Court in *Boggs v. Boggs*, 520 U.S. at 841-42, stated that the first question in ERISA preemption analysis is "if state law conflicts with the provisions of ERISA or operates to frustrate its objects." The Court further stated that if a court determined that a state law directly conflicted with ERISA's provisions, no further analysis was necessary. The *Boggs* majority stated that there was no need to analyze the "relates to" clause. *Id.* However, the Court did not specifically overrule *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. at 739, which held that state laws that conflict with the substantive provisions of ERISA obviously "relate to an employee benefit plan." Under either the *Boggs* or *Metropolitan Life* analysis, if a state law directly conflicts with ERISA's provisions, ERISA will preempt it.

State laws are preempted if they (1) regulate the types of benefits or terms of a plan, *e.g.*, *District of Columbia v. Greater Washington Board of Trade*, 506 U.S. 125 (1992) (workers' compensation law prohibiting termination of health benefits of workers receiving workers' compensation benefits is preempted); (2) create specific requirements as to funding, reporting and disclosure, vesting, and the like, *e.g.*, *Hewlett-Packard Co. v. Barnes*, 571 F.2d 502 (9th Cir.), *cert. denied*, 439 U.S. 831 (1978) (state law regulating funding and disclosure requirements of ERISA plans is preempted); or (3) establish rules for the calculation of benefits, *e.g.*, *FMC Corp. v. Holliday*, 498 U.S. 52 (1990) (interference with calculation of benefits through state antisubrogation statute); *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504 (1981) (prohibition of offset of workers' compensation benefits against retirement benefits). Failure to preempt such law would frustrate ERISA's objective to foster uniform administration of employee benefit

plans.[4/] *See Boggs v. Boggs*, 520 U.S. at 841-42; *cf. Travelers*, 514 U.S. at 668 (recognizing that laws having direct effects on plans are preempted).

B. Because ERISA Provides Uniform Standards Concerning The Form, Payment, and Distribution of Pension Benefits, Washington State's Statute Designating the Beneficiary of Benefits Paid from ERISA-Covered Employee Benefit Plans Is Conflict Preempted.

"ERISA is a comprehensive statute designed to promote the interests of employees and their beneficiaries in employee benefit plans." *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 90 (1983). "The statute imposes participation, funding, and vesting requirements on pension plans." *Id.* at 91. ERISA also provides uniform minimum standards for the form, payment and distribution of pension benefits. ERISA §§ 201-11, 29 §§ 1051-1061. *See generally* D. McGill and D. Grubbs, Jr., FUNDAMENTALS OF PRIVATE PENSIONS, Chapters 4 - 6 (6th ed. 1989).

Congress mandated an extremely detailed procedure in order for participants and beneficiaries to receive pension benefits. Not only must a participant work a certain number of years to be vested, but even after the participant is vested, Congress decreed certain other requirements in order for the participant and beneficiaries to receive their benefits. *Shaw v. Delta Air Lines, Inc.*, 463 U.S. at 90-91. ERISA § 205 requires that married participants can only receive a retirement benefit that does not provide for their spouses if their spouses provide a written consent to waive their rights, ERISA § 205, 29 U.S.C. § 1055; *see also* I.R.C. §§ 401(a)(11) & 417, 26 U.S.C. §§ 401(a)(11) & 417, and pension plans will lose their tax qualification if they do not include these provisions. I.R.C. §§ 401(a)(11) & 501(a), 26 U.S.C. §§ 401(a)(11) & 501(a).

[4/] *Amicus* notes that these cases were decided before *Boggs*, and none of them focused on the concept of conflict preemption, even though the state law at issue directly conflicted with ERISA provisions.

That section also requires the provision of a pre-retirement pension benefit to a surviving spouse unless the spouse has waived this benefit. ERISA § 205(e), 29 U.S.C. § 1055(e). This section sets forth when consent must be obtained and under what circumstances. ERISA §§ 205(g)(1) & (g)(2), 29 U.S.C. §§ 1055(g)(1) & (g)(2). ERISA § 206 not only permits the division of pension benefits upon divorce, but it permits a plan to pay some of these benefits directly to the spouse if a court order meets certain conditions. ERISA § 206(d), 29 U.S.C. § 1056(d); *see also* I.R.C. § 414(p), 26 U.S.C. § 414(p). Finally, these sections specify the minimum time frame by which the pension benefits must be paid. ERISA § 206(a), 29 U.S.C. § 1056(a).

Washington State's beneficiary designation law provides that a participant's employee benefit plan beneficiary designation made prior to a divorce is "revoked" and that benefits which a participant has earned from employee benefit plans pass upon the participant's death as if the former spouse had predeceased the participant. This law directly conflicts with ERISA's distribution of pension benefits distribution scheme set forth in Sections 205 and 206 because it creates specific requirements as to whom and how pension benefits are to be paid. Accordingly, the Washington State designated beneficiary law directly regulates pension benefits and must be preempted. *See Boggs v. Boggs*, 520 U.S. at 841-42; *District of Columbia v. Greater Washington Board of Trade*, 506 U.S. 125 (1992); *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. at 739.

II. ERISA MUST PREEMPT WASHINGTON STATE'S DESIGNATION OF BENEFICIARY LAW BECAUSE IT UNDERCUTS CONGRESS' INTENT TO PROTECT PARTICIPANTS AND TO PROMOTE UNIFORM ADMINISTRATION OF EMPLOYEE BENEFIT PLANS.

Even if the Court finds that ERISA does not preempt Washington State's law under traditional conflict preemption analysis as to pension benefits, Washington State's designation of beneficiary law still must be preempted under ERISA § 514(a) as to all types of benefits because it relates to an

employee benefit plan.[5] In *Travelers*, the Court reiterated its holding that a state law relates to an employee benefit plan if it has a reference to or connection with a plan. 514 U.S. at 656, *quoting Shaw v. Delta Air Lines, Inc.*, 463 U.S. at 96-97.[6] To determine whether a state law has a connection with a plan, a court must look to "the objectives of the ERISA statute as a guide to the scope of the state law that Congress understood would survive, as well as to the nature of the effect of the state law on ERISA plans." *California Division of Labor Standards Enforcement v. Dillingham Construction, N.A., Inc.*, 519 U.S. at 325.

The Court has stated that the general objective of ERISA is to protect participants and beneficiaries. *See Boggs v. Boggs*, 520 U.S. at 845; ERISA § 1001(b), 29 U.S.C. § 2(b). The Court has also concluded that "the basic thrust of the pre-emption clause, then, was to avoid a multiplicity of regulation in order to permit the nationally uniform administration of employee benefit plans." *Travelers*, 514 U.S. at 646.

Three types of state laws are always preempted: (1) laws that mandate employee benefit structures or their administration; (2) laws that bind employers or plan administrators to particular choices or preclude uniform administrative practice, thereby functioning as a regulation of an ERISA plan itself; and (3) laws providing alternate enforcement mechanisms for employees to obtain ERISA plan benefits. *See Travelers*, 514 U.S. at 658; *accord*, *Arizona State Carpenters Pension Trust*

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[5] Section 514(a) states that ERISA "shall supersede any and all State laws insofar as they. . . relate to any employee benefit plan" covered by the statute.

[6] The Washington State statute specifically refers to employee benefit plans, among other assets, in its definition of non-probate assets. WASH. REV. CODE § 49.64 (West 2000). However, because the statute does not act exclusively on employee benefit plans and will apply to assets other than benefit plans, *amicus* submits that the Washington State statute would not be preempted under the "reference to" analysis.

Fund v. Citibank, 125 F.3d at 723; *Coyne & Delany Co. v. Selman*, 98 F.3d at 1468.

Here, the *Travelers*' test for preemption of a state law dictates that ERISA should preempt the Washington State designation of beneficiary law. By directing how employee benefit plans will administer the method by which and to whom beneficiary's benefits are paid, Washington State law has "a marked effect on plan administration." *See UNUM Life Ins. Co. v. Ward*, 526 U.S. at 378. This law also binds plan administrators to particular choices as to how and to whom to pay benefits by overriding the provisions of the plan itself, thereby regulating the plan directly. *Id.*

Moreover, if ERISA does not preempt Washington State's designation of beneficiary law, that state law will undercut Congress' general objective in enacting ERISA as well as its reason for enacting the preemption clause. Failure to preempt this designation of beneficiary law would decrease protection of participants and their beneficiaries because it would wrest control from the participant of the decision to whom the participants' benefits should be paid. The state law would determine to whom the benefits should be paid instead of the participants themselves. *See Boggs v. Boggs*, 520 U.S. at 845; ERISA § 1001(b), 29 U.S.C. § 2(b). If the participants follow the plan provisions, they should be assured that their choices are followed.[7]

A conclusion by the Court that ERISA does not preempt these designation of beneficiary laws would run counter to Congress' intent to foster uniform administration of employee benefit plans. *See Travelers*, 514 U.S. at 645-46. Employee benefit plans would be required to comply with conflicting directives among 50 states, thereby increasing the administrative and financial burdens they face. Compliance

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[7] This perspective places direct responsibility upon participants to review their beneficiary designations when they experience a life change such as marriage, divorce or widowhood, and follow the terms of their plan to make any changes.

with different laws in 50 states would also make administration of nationwide benefit plans more difficult and inefficient, which might lead sponsoring employers with benefit plans to reduce benefits or those employers without benefit plans to refrain from offering them. *See Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 10-12 (1987). Moreover, there would be no finality concerning payment of employee benefits. Instead, plans would become embroiled in state probate and other actions, also increasing their administrative costs. As a way to minimize their liability, pension plans might file interpleader actions to request court determinations concerning to whom payment will be made. *E.g.*, *Stickney v. Muhlenberg College TIAA-CREF Retirement Plan*, 896 F. Supp. 412 (E.D. Pa. 1995).

ERISA must preempt Washington State's designation of beneficiary law in order to accomplish Congress' intent to protect participants and beneficiaries and promote uniform administration of employee benefit plans.

III. BECAUSE WASHINGTON STATE'S LAW REGULATES AN ERISA-GOVERNED RELATIONSHIP, IT IS PREEMPTED.

In an effort to further analyze whether ERISA preempts a state law, many Circuit Courts apply a "relationship" test. *See, e.g.*, *Rutledge v. Seyfarth, Shaw, Fairweather & Geraldson*, 201 F.3d 1212, 1217, *opinion amended*, 208 F.3d 1170 (9th Cir. 2000). One version of the relationship test may be summarized as follows: where state law claims fall outside the three areas of concern identified in *Travelers*, *see* ARGUMENT in II, *supra*; arise from a state law of general application; do not depend upon ERISA; and do not affect the relationships between the principal ERISA entities, the state law claims are not preempted. *See Arizona State Carpenters Pension Trust Fund v. Citibank*, 125 F.3d at 724; *see generally Mackey v. Lanier Collections Agency & Service*, 486 U.S. 825, 833 (1988) ("[L]awsuits against ERISA plans for run-of-the-mill state-law claims such as unpaid rent, failure to pay creditors, or even torts committed by an ERISA plan" are against the plan in a capacity

other than as a plan -- *i.e.*, as a commercial entity -- and are not preempted.)

Conversely, state laws that regulate an ERISA-governed relationship -- between the plan and participants, the plan and fiduciaries, the plan and sponsoring employer, the fiduciaries or plan administrator and participants, or the fiduciaries and plan administrator[8/] – will generally relate to an employee benefit plan, and therefore will be preempted. *See, e.g.*, *Carpenters Local Union No. 26 v. United States Fidelity & Guaranty Co.*, 215 F.3d 136 (1st Cir. 2000); *Smith v. Provident Bank*, 170 F.3d 609 (6th Cir. 1998); *Arizona State Carpenters Pension Trust Fund v. Citibank*, 125 F.3d 715 (9th Cir. 1997); *Coyne & Delany Co. v. Selman*, 98 F.3d 1457, 1468 (4th Cir. 1996); *Morstein v. National Ins. Services, Inc.*, 93 F.3d 715, 722-23 (11th Cir. 1996) (*en banc*); *Boyle v. Anderson*, 68 F.3d 1093, 1103 (8th Cir. 1995), *cert. denied*, 516 U.S. 1173 (1996); *Travitz v. Northeast Dept. ILGWU Health & Welfare Fund*, 13 F.3d 704, 709 (3d Cir.), *cert. denied*, 511 U.S. 1143 (1994); *General American Life Ins. Co. v. Castonguay*, 984 F.2d 1518, 1521-22 (9th Cir. 1993); *Memorial Hospital System v. Northbrook Life Ins. Co.*, 904 F.2d 236, 249 (5th Cir. 1990). State laws regulating these relationships are particularly likely to interfere with ERISA's regulatory scheme, and are presumptively preempted. *See General American Life Ins. Co. v. Castonguay*, 984 F.2d at 1521-22.

There can be nothing more central affecting the relationship between a plan and its participants than a state law dictating to whom benefits are paid. Under the relationship test, ERISA must preempt Washington State's designation of beneficiary law. *See Arizona State Carpenters Pension Trust Fund v.*

[8/] The relationship between the employer and employee is not an ERISA-governed relationship because that relationship concerns the employment relationship, which has been regulated historically by the states, *e.g.*, *DeCanas v. Bica*, 424 U.S. 351, 356 (1976), not a relationship growing out of benefits. *See Rokohl v. Texaco*, 77 F.3d 126, 130 (5th Cir. 1996); *Forbus v. Sears Roebuck & Co.*, 30 F.3d 1402, 1406-07 (11th Cir. 1994), *cert. denied*, 513 U.S. 1113 (1995).

Citibank, 125 F.3d 715 (9th Cir. 1997); *Coyne & Delany Co. v. Selman*, 98 F.3d at 1468.

CONCLUSION

For the foregoing reasons, AARP urges the Court to reverse the decision of the Supreme Court of Washington.

August 10, 2000

Respectfully submitted,

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No. 99-1529

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Supreme Court of the United States

SEP 18 2000

DONNA RAE EGELHOFF,
Petitioner,

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On Writ of Certiorari
To The Supreme Court of Washington

BRIEF OF THE NATIONAL CONFERENCE OF STATE LEGISLATURES, COUNCIL OF STATE GOVERNMENTS, NATIONAL GOVERNORS' ASSOCIATION, NATIONAL ASSOCIATION OF COUNTIES, NATIONAL LEAGUE OF CITIES, INTERNATIONAL CITY/COUNTY MANAGEMENT ASSOCIATION, AND U.S. CONFERENCE OF MAYORS AS *AMICI CURIAE* SUPPORTING RESPONDENTS

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QUESTION PRESENTED

Whether ERISA preempts Washington State's divorce-revocation statute, Wash. Rev. Code § 11.07.010.

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INTEREST OF THE *AMICI CURIAE*

Amici, organizations whose members include state, county, and municipal governments and officials throughout the United States, have a compelling interest in legal issues that affect state and local governments.[1] *Amici* have a long-standing interest in preserving traditional exercises of state authority from the unintended encroachment of ERISA preemption.

Among the most important exercises of the States' authority is the enactment of the laws governing divorce and the administration of decedents' affairs. Washington's divorce-revocation rule, Wash. Rev. Code § 11.07.010, applies to nonprobate assets the traditional common law rule that a divorce revokes a prior testamentary transfer in favor of an ex-spouse. The statute thus recognizes the increasing importance of nonprobate wealth in modern society and protects a decedent's dependents from the misallocation of assets based on a stale beneficiary designation.

Petitioner's contention that ERISA preempts Washington's divorce-revocation law rests on an erroneous view of the statute's effect on ERISA plans. The Washington statute imposes at most a *de minimis* burden on plan administrators. It is clear that the statute does not "do 'major damage' to 'clear and substantial federal interests,'" which would be necessary to hold it preempted under principles of conflict preemption. *Hisquierdo v. Hisquierdo*, 439 U.S. 572, 581 (1979) (quoting *United States v. Yazell*, 382 U.S. 341, 352 (1966)).

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[1] The parties have consented to the filing of this brief *amicus curiae*. Their letters of consent have been filed with the Clerk of the Court. Pursuant to this Court's Rule 37.3, *amici* state that this brief was not authored in whole or in part by counsel for a party, and no person or entity, other than the *amici* or their members, made a monetary contribution to the preparation or submission of this brief.

Because of the importance of this issue to *amici* and their members, this brief is submitted to assist the Court in its resolution of the case.

INTRODUCTION AND SUMMARY OF ARGUMENT

1. Washington's Divorce-Revocation Statute

In 1993, the Washington Legislature enacted Wash. Rev. Code § 11.07.010, unifying the law of probate and non-probate transfers by applying the traditional rule that a divorce revokes a prior testamentary disposition of assets that pass outside of wills, such as life insurance policies, annuities, IRAs, pensions, bank accounts and trusts. Under the Washington statute, which applies only to divorce decrees entered "by a superior court of this state," Wash. Rev. Code §11.07.010(1), "a provision made prior" to the dissolution or invalidation of a marriage "that relates to the payment or transfer at death of a decedent's interest in a nonprobate asset in favor of or granting an interest or power to the decedent's former spouse is revoked." *Id.* § 11.07.010(2)(a). Under the statute, "the nonprobate asset affected passes, as if the former spouse failed to survive the decedent." *Id.*

Washington's divorce-revocation rule does not apply, however, if "[t]he instrument governing disposition of the nonprobate asset expressly provides otherwise." *Id.* § 11.07.010(2)(b)(i). It also does not apply if the divorce decree "requires that the decedent maintain a nonprobate asset for the benefit of a former spouse or children of the marriage . . . and other nonprobate assets of the decedent fulfilling such a requirement . . . do not exist at the decedent's death," or if "the decedent could not have effected the revocation by unilateral action because of the terms of the decree." *Id.* §11.07.010(2)(b)(ii) & (iii). Because the statute applies only to beneficiary designations made prior to divorce, it does not apply to beneficiary designations made in favor of an ex-spouse post-divorce.

Under the statute, the third party in possession of a non-probate asset "is not liable for making a payment or transferring an interest . . . to a decedent's former spouse whose interest in the nonprobate asset is revoked," if it does not have "actual knowledge of the dissolution or other invalidation of marriage." *Id.* § 11.07.010(3)(a). Where the third party holding the asset has "actual knowledge . . . of a dispute between the former spouse and the beneficiaries" it is not required to pay over the asset. *Id.* § 11.07.010(3)(b). While the holder can pay over the asset and demand security, *id.* § 11.07.010(3)(c), it need do no more than "notify" the parties that the dispute exists and "refuse to pay or transfer" the asset until the parties agree or a court resolves the dispute. *Id.* § 11.07.010(3)(b)(i), (ii).

2. Summary of Argument

A. ERISA's express preemption provision, 29 U.S.C. § 1144(a), does not preempt Washington's divorce-revocation rule, Wash. Rev. Code § 11.07.010, which applies to non-probate assets regardless of whether they are held in an ERISA plan. The statute does not have a sufficient connection with ERISA plans to warrant preemption.

Section 11.07.010 does not "mandate[] employee benefit structures or their administration," *New York State Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 658 (1995), and is far removed from the core concerns of ERISA. The statute does not interfere with the discretionary aspects of plan design with respect to benefits and benefit levels. The statute simply effectuates the likely intent of a divorcing plan participant by creating a default rule, revoking a beneficiary designation made prior to the divorce, which can be overcome by the terms of a plan that "expressly provides otherwise," or by the terms of the divorce decree. Wash. Rev. Code § 11.07.010(2)(b). It likewise does not compel plan administrators to determine beneficiary

status under state law as the statute allows the plan to hold the asset until the parties agree or a court resolves a dispute between competing claimants. *Id.* § 3(b).

Petitioner's contention that Washington's statute "interferes with the nationally uniform administration of employee benefit plans", Pet. Br. 17, is not persuasive. A suit such as this one, between competing beneficiaries, imposes no more than a *de minimis* burden on ERISA plans. Under the Washington statute, a plan "is not liable" if it transfers the asset in reliance on the governing instrument before it receives "written notice" as to the dissolution of the marriage and the existence of a dispute. Wash. Rev. Code §11.07.010(3)(a) & (d). Where the plan receives notice of a dispute between claimants, it "may, without liability, notify in writing" the parties as to "the existence of a dispute." *Id.* § 11.07.010(3)(b). Beyond that, the plan need do nothing until the parties resolve their dispute. The plan can – but need not -- transfer the asset to the designated beneficiary and demand security "for any liability, loss, damage, costs, and expenses for or on account" of the transfer. *Id.* § 11.07.010(3)(c). Plans are thus not threatened with double liability. As a practical matter, the plan need do no more than send a form letter to the competing claimants. Such a "burden" is simply too inconsequential to render this important state law preempted.

B. Petitioner also argues that Washington's divorce-revocation rule conflicts with ERISA's substantive provisions. None of petitioner's arguments establish that " 'compliance with both federal and state regulations is a physical impossibility,' " or that " 'state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.' " *Boggs v. Boggs*, 520 U.S. 833, 844 (1997) (citation omitted).

Petitioner's first theory is that Section 11.07.010 "directly conflicts with ERISA's definition of 'beneficiary.' " Pet. Br.

28. This argument fails, however, because ERISA's definition of the term "beneficiary" contemplates contingent beneficiaries, and under the plans, Mr. Egelhoff's children and estate are contingent beneficiaries. *See, e.g.*, J.A. 40.

Petitioner's second theory is that "Congress intended that the rights of ERISA plan beneficiaries would be determined by reference to readily accessible ERISA plan documents, not on the basis of varying and potentially inconsistent state laws." Pet. Br. 33. This argument rests on the erroneous premise that ERISA plans determine beneficiary status solely by reference to the plan documents and can entirely ignore state law in that process. That cannot be the case. State statutes and common law frequently ascribe the legal consequences of important life events and relationships; plan administrators must abide by these determinations.

For example, the States generally presume that a person missing for a prescribed period of years is dead. Could an ERISA plan disregard a state court determination that the designated beneficiary is dead and refuse pay benefits to the contingent beneficiaries? In short, the rights of ERISA beneficiaries are not solely "determined by reference to . . . plan documents." Pet. Br. 31 State law plays an important role, and cannot be preempted on the basis of a "mere conflict in words." *Hisquierdo v. Hisquierdo*, 439 U.S. 572, 581 (1979).

Invoking *Boggs*, petitioner further asserts that Section 11.07.010 conflicts with "ERISA's goal of protecting plan participants and their beneficiaries." Pet. Br. 35. But in *Boggs*, a state law conflicted with ERISA's clear and substantial interest in protecting surviving spouses. By contrast, ERISA does provide a mechanism for ex-spouses to protect their interest as beneficiaries—the QDRO provision—which defers to state law. Petitioner, however, did not avail herself of this provision and in the divorce settlement expressly disclaimed her interest in Mr. Egelhoff's pension. *See*

J.A. 33. It is petitioner's interpretation of ERISA—not Washington law—which conflicts with ERISA's purpose of protecting the economic well-being of participants and their dependents. *See* 29 U.S.C. § 1001b(a)(2).

Nor does Section 11.07.010 conflict with ERISA's anti-alienation provision. The statute does not affect an "assignment or alienation," as those terms are commonly understood—transfers of property undertaken by voluntary act and not by operation of law. The regulatory definition likewise does not support petitioner because respondents did not acquire their rights to their father's pension through an "arrangement" with either their father or petitioner. 26 C.F.R. § 1.401(a)-13. Finally, by the terms of her divorce, petitioner was no longer Mr. Egelhoff's dependent. Section 11.07.010 thus does not conflict with what this Court has identified as the purpose of the anti-alienation provision: "safeguarding a stream of income for pensioners . . . and their dependents." *Boggs*, 520 U.S. at 852 (quotation and citation omitted).

ARGUMENT

ERISA DOES NOT PREEMPT WASHINGTON'S DIVORCE-REVOCATION STATUTE

The Washington Supreme Court correctly held that ERISA does not preempt Wash. Rev. Code § 11.07.010. The statute is an integral part of a comprehensive legislative scheme regulating the disposition of a decedent's property, whether the property is a probate or nonprobate asset. Derived from the traditional common law rule that a divorce revokes a prior testamentary disposition, *see* John H. Langbein, *The Nonprobate Revolution and the Future of the Law of Succession*, 97 Harv. L. Rev. 1108, 1135 & n.107 (1984), the statute—which is modeled on Section 2-804 of the Uniform Probate Code—applies the same rule to nonprobate assets,

revoking beneficiary designations in favor of an ex-spouse made prior to divorce in will substitutes.

Divorce-revocation rules recognize that "[c]ircumstances often change across the decades in ways that [decedents] do not address," rendering wills and beneficiary designations in will substitutes "stale." Langbein at 1135. "As [family] circumstances change, there is considerable danger that the transferor may neglect to update one or more components of an estate that involves numerous instruments and institutions of transfer." *Id.* at 1140. While "[g]ood divorce lawyers take it as part of their job to see to it that clients revise their wills [and other instruments], . . . not every client is represented by counsel, much less good counsel, nor do clients inevitably act promptly in accordance with counsel's advice." *Id.* at 1135. The premise of divorce-revocation rules is that "because most [decedents] do not want to benefit ex-spouses," designation of an ex-spouse in wills and will substitutes "no longer reflects the intentions" of the decedent. *Id.* The statutes thus protect a decedent's dependents from the misallocation of assets based on stale beneficiary designations.

In adapting the common law rule to nonprobate assets, Washington's statute recognizes the increasing role of contractually-based wealth in modern society. *Id.* at 1119. As Professor Langbein has explained, "The bulk of modern wealth takes the form of contract rights rather than rights in rem—promises rather than things. . . . Promissory instruments—stocks, bonds, mutual funds, bank deposits, and pension and insurance rights—are the dominant component of today's private wealth." *Id.* Indeed, "'the proceeds of one or more life insurance policies'" are significant assets in most estates. Spencer Kimball, *The Functions of Designations of Beneficiaries in Modern Life Insurance: U.S.A.*, in *Life Insurance Law In International Perspective* 74, 75-76 (J. Hellner & G. Nord eds. 1969) (quoted in Langbein at 1110). Moreover, retirement benefits—whether

in the form of Individual Retirement Accounts or employer-provided retirement accounts—also comprise "[a] very large portion of the wealth of many decedents." II A. James Casner & Jeffrey N. Pennell, *Estate Planning* § 9.0, at 9.3 (6th ed. 1999 Supp.); *see also* Langbein at 1111.

That the nonprobate assets at issue in this dispute—the proceeds of an employer-provided life insurance policy and a defined contribution pension plan,[2] *see* Pet. App.3a—were provided by ERISA plans does not render Washington's statute preempted. As explained below, Wash. Rev. Code § 11.07.010 is a law of general applicability which is not preempted by ERISA's express preemption provision, 29 U.S.C. §1144(a). And giving effect to Washington's statute in this case—a suit between two competing claimants that is based on principles of unjust enrichment and to which no ERISA plan is a party—does not conflict with the purposes of ERISA. In contrast to *Boggs v. Boggs*, 520 U.S. 833 (1997), neither the text of ERISA nor its legislative history clearly manifest a Congressional purpose to displace Washington State's traditional authority to determine the rules by which a decedent's property should be distributed. Petitioner's position likewise calls into question the validity of other state laws such as slayer-revocation provisions, *see, e.g.*, Wash. Rev. Code § 11.84; Uniform Probate Code § 2-803, and rules governing the legal consequence of a person's prolonged absence. *See* 25A C.J.S. *Death* § 6 (1966). This Court should therefore affirm the judgment below.

A. ERISA Section 514(a) Does Not Expressly Preempt Washington's Divorce-Revocation Statute

Petitioner contends that ERISA Section 514(a), 29 U.S.C. § 1144(a), which provides that ERISA "shall supersede any and all State laws insofar as they may now or

[2] Mr. Egelhoff's pension plan was "jointly provided by him and his employer." Pet. App. 3a.

hereafter relate to any employee benefit plan" subject to ERISA, expressly preempts Wash. Rev. Code § 11.07.010. Petitioner asserts that "Section 11.07.010 has a 'connection with' an ERISA plan because it mandates plan administration and binds plans to a particular choice regarding matters of core ERISA concern." Pet. Br. 11. Petitioner further argues that Washington's statute "has a 'connection with' an ERISA plan because it interferes with the nationally uniform administration of employee benefit plans." *Id.* at 17. This is so because Wash. Rev. Code § 11.07.010 overrides a plan participant's designation of beneficiary, thereby " 'mandat-[ing] employee benefit structures or their administration' " and 'bind[ing] plan administrators to [a] particular choice.'" Pet. Br. 6-7 (quoting *New York State Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 658, 659 (1995)).

In petitioner's view, the Washington statute "directly regulates the determination of beneficiary status and the payment of ERISA plan benefits—functions that lie at the very heart of ERISA's concerns." *Id.* at 7. Furthermore, if Washington can enforce its law, "ERISA plans would be prevented from employing a uniform administrative scheme for determining beneficiary rights, and would instead be required to determine beneficiary status and pay plan benefits in a different manner in different jurisdictions, depending on which state's law was thought to apply," thus frustrating Congress' purpose of subjecting plan administrators "'to a uniform body of benefits law.'" *Id.* (quoting *Travelers*, 514 U.S. at 656). The Court should reject petitioner's overstated claims.

1. The Court has repeatedly reaffirmed that ERISA preemption is not some unique species, but rather is subject to the same rules applicable in all preemption cases. *See California Div. of Lab. Stds. Enforcement v. Dillingham Const., Inc.*, 519 U.S. 316, 324-25 (1997); *Travelers*, 514

U.S. at 654-55. As the Court observed in *John Hancock Mut. Life Ins. Co. v. Harris Trust & Sav. Bank*, 510 U.S. 86, 99 (1993), "we discern no solid basis for believing that Congress, when it designed ERISA, intended fundamentally to alter traditional preemption analysis."

Thus, in ERISA cases the Court has "never assumed lightly that Congress has derogated state regulation, but instead [has] addressed claims of pre-emption with the starting presumption that Congress does not intend to supplant state law." *Travelers*, 514 U.S. at 654 (citing *Maryland v. Louisiana*, 451 U.S. 725, 746 (1981)). And where, as here, " 'federal law is said to bar state action in fields of traditional state regulation, . . . [the Court has] worked on the "assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress." ' " *Dillingham*, 519 U.S. at 325 (quoting *id.* at 655 (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947))). Furthermore, "[s]tate family and family-property must do 'major damage' to 'clear and substantial' federal interests before the Supremacy Clause will demand that state law be overridden." *Hisquierdo*, 439 U.S. at 581 (quoting *United States v. Yazell*, 382 U.S. 341, 352 (1966)).

The Court has accordingly recognized that the text of ERISA's express preemption is unhelpful in defining the scope of preemption. Read literally, Section 514a's operative text—"relate to"—would "read the presumption against pre-emption out of the law whenever Congress speaks to the matter with generality" because " 'really, universally, relations stop nowhere.' " *Travelers*, 514 U.S. at 655 (citation omitted) (order of quotations reversed). Moreover, the Court has acknowledged that its "prior attempt to construe the phrase" as meaning that " '[a] law "relates to" an employee benefit plan, in the normal sense of the phrase, if it has a connection with or reference to such a plan,' " has likewise not proved helpful. *Id.* at 655-56 (quoting *Shaw v.*

Delta Airlines, Inc., 463 U.S. 85, 96-97 (1983)); *see also Dillingham*, 519 U.S. at 325. As *Travelers* explained, "For the same reasons that infinite relations cannot be the measure of pre-emption, neither can infinite connections." 514 U.S. at 656.

The Court must therefore "look instead to the objectives of the ERISA statute as a guide to the scope of the state law that Congress understood would survive," *id.*, "as well as to the nature of the effect of the state law on ERISA plans." *Dillingham*, 519 U.S. at 325 (citing *Travelers*, 514 U.S. at 658-59). While "ERISA certainly contemplated the pre-emption of substantial areas of traditional state regulation," a "reading of § 514(a) resulting in the pre-emption of traditionally state-regulated substantive law in those areas where ERISA has nothing to say would be 'unsettling.' " *Id.* at 330 (quoting *Travelers*, 514 U.S. at 665).

2. The Court has identified " ' "reporting, disclosure, fiduciary responsibility, and the like" ' " as the core concerns of ERISA. *Id.* at 330 (quoting *Travelers*, 514 U.S. at 661 (quoting *Shaw*, 463 U.S. at 98)). As *Travelers* explains, "[t]he basic thrust of the pre-emption clause . . . was to avoid a multiplicity of regulation in order to permit the nationally uniform administration of employee benefit plans." 514 U.S. at 657. Thus, the Court has invalidated "state laws that mandated employee benefit structures or their administration." *Id.* at 658. The Court has thus held preempted state laws prohibiting a plan from discriminating on the basis of pregnancy or requiring a plan to pay a certain benefit level to disabled employees, *see Shaw*, 463 U.S. at 89, a state law prohibiting a plan from seeking reimbursement from a beneficiary who recovered damages from a third party, *see FMC Corp. v. Holliday*, 498 U.S. 52 (1990), and a state law which prohibited a plan from offsetting an employee's pension benefit by the amount of worker's compensation

benefits. *See Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504 (1981).

Washington's divorce-revocation statute, however, does not "mandate[] employee benefit structures or their administration," *Travelers*, 514 U.S. at 658, and is far removed from the core concerns of ERISA. In contrast to the statutes at issue in the cases cited above, Wash. Rev. Code § 11.07.010 does not require that an ERISA plan offer any particular benefit or circumscribe a plan's ability to seek reimbursement or offset against a benefit.

Nor does it "mandate the administration of an ERISA plan" by "bind[ing] a plan administrator to a particular choice," *see* Pet. Br. 12 (order of quotations reversed), as that concept of preemption has been defined in this Court's cases. As the Court has made clear, state law is preempted when it interferes with the discretionary aspect of plan design with respect to benefits and benefit levels. But to the extent "the determination of beneficiary status pursuant to plan terms is a core administrative function of any ERISA plan," Pet. Br. 12, it is largely a ministerial one. While plan administrators have "choice" in deciding a hierarchy of beneficiary designation, they do not otherwise possess "choice" to decide who is entitled to receive benefits. That choice remains with the plan participant. Wash. Rev. Code § 11.07.010 simply effectuates the likely intent of a divorced plan participant by creating a default rule, which can—but need not—be overcome either by plan terms "expressly provid[ing] otherwise," or a "decree of dissolution . . . that requires the decedent maintain a nonprobate asset for the benefit of a former spouse" or that prohibits the decedent from "effect-[ing] the revocation by unilateral action." Wash. Rev. Code § 11.07.010(2)(b). To the extent that plan administrators have discretion in creating plan terms, the statute does not compel any "particular choice." Pet. Br. 12. Plan administrators are free to adopt plan terms that expressly reject

Washington's divorce-revocation rule. *See* Wash. Rev. Code § 11.07.010(2)(b)(i).[3]

As for a plan, the statute clearly states that if the administrator relies on the plan documents to make payment or transfer the asset to a former spouse before it has "actual knowledge of the dissolution . . . of marriage," it "is not liable." Wash. Rev. Code § 11.07.010(3)(a). Where a plan has "actual knowledge" of a dispute between "the former spouse and beneficiaries," the statute does not require that the plan make any "particular choice" as to its course of action. *Id.* § (3)(b). Rather, it can transfer the asset to one of the parties, conditioned on the provision of security indemnifying it "for any liability, loss, damage, costs, and expenses," *id.* § (3)(c), or it can "without liability, refuse to pay or transfer" the asset until the parties consent to the transfer or a court directs it. *Id.* § (3)(b). Thus, contrary to petitioner's assertion, the statute does not "compel plan administrators to determine beneficiary status" under state law. Pet. Br. 16. The plan can, of course, apply the divorce-revocation rule, but it can also leave the decision to the parties or the court. Wash. Rev. Code § 11.07.010(3)(b)(i) & (ii). Thus, the statute in no sense "binds a plan administrator to a particular choice." Pet. Br. 12.

Petitioner makes much of various ERISA statutory provisions, asserting that the "determination of beneficiary status" is a "central" concern of ERISA. Pet. Br. 15. Petitioner invokes Section 404(a)(1), which provides that "a fiduciary shall discharge his duties . . . for the exclusive purpose of . . . providing benefits to participants and their beneficiaries," Pet. Br. 13 (quoting 29 U.S.C. § 1104(a)(1)(A)(i)), and Section 403(c)(1), which requires

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[3] Petitioner's argument that Washington's statute "bind[s] plan administrators to a particular choice," Pet. Br. 12, is especially misplaced in this case, in which neither the Boeing pension plan nor life insurance plan are parties.

that plan assets be "held for the exclusive purposes of providing benefits to participants in the plan and their beneficiaries and defraying" plan expenses. *Id.* § 1103(c)(1). Respondents, however, who are Mr. Egelhoff's children (including a minor child), are also beneficiaries because they are contingent beneficiaries under the express terms of the pension plan. *See* J.A. 40 (pension funds "will be paid . . . [i]f there is no surviving spouse, to your children in equal shares").[4] Moreover, neither Sections 404(a)(1) nor 403(c)(1) address how "beneficiary status," Pet. Br. 15, is to be ascertained.

Similarly, that Congress defined the term "beneficiary" as "a person designated by a participant, or by the terms of an employee benefit plan, who is *or may become* entitled to a benefit thereunder," 29 U.S.C. § 1002(8) (emphasis added), does not aid petitioner. This definition clearly contemplates contingent beneficiaries, whether they be "individuals" such as Mr. Egelhoff's children or his "estate." *See id.* § 1002(9) (defining "person" as meaning, *inter alia*, an "individual" or "estate"). The divorce-revocation rule does not create a new class of beneficiaries. It simply treats the divorce as having the same effect as the death of a former spouse; the plan benefits are still transferred to beneficiaries in accordance with the plan documents.

In petitioner's view, the on-file designation form is the be-all and end-all of the beneficiary determination. *See* Pet. Br. 12-15. But the reason the beneficiary designation ordinarily controls the disposition of the asset is not merely because it is on file. It is because it reflects the intent of the plan participant. When divorce occurs, "most testators do not want to benefit ex-spouses," Langbein, *The Nonprobate Revolution*, 97 Harv. L. Rev. at 1135, and the designation of

[4] Mr. Egelhoff's estate is the beneficiary of the life insurance proceeds. *See* Pet. App. 34a. His children therefore inherit as statutory heirs. *Id.* at 34a-35a.

an ex-spouse no longer accurately reflects the participant's intent. Rather, that intent is best reflected by the property settlement the participant and ex-spouse arrive at, which can, of course, under both Wash. Rev. Code § 11.07.010 and the ERISA QDRO provisions, 29 U.S.C. § 1056(d)(3)(A), make provision for an ex-spouse.[5]

Indeed, state slayer-revocation statutes have the same "connection with" an ERISA plan as divorce-revocation rules, "treating the affected interest as though the decedent had revoked the beneficiary designation." John H. Langbein & Bruce A. Wolk, *Pension and Employee Benefit Law* 438 (2d ed. 1995).[6] Under petitioner's theory, a State's slayer-revocation statute could not be enforced to deny a designated beneficiary benefits due under a plan. The IRS, however, " 'has recognized that [an ERISA] plan must conform to a state's 'slayer' statute, and not pay benefits to the person who murdered the participant, even if that person is named as the

[5] The United States argues that "it cannot be assumed that a plan participant would necessarily have chosen to revoke the designation of the former spouse as beneficiary immediately upon divorce. A participant might, out of feelings of obligation, remorse, or continuing affection, intend that the former spouse remain as beneficiary, at least for the time being." U.S. Br. *Am. Cur.* 23.

Such a participant can, of course, agree to retain a former spouse as a beneficiary under the settlement agreement. *See* Wash. Rev. Code § 11.07.010(2)(b)(ii) & (iii). And because the statute applies only to beneficiary designations made "prior to" the divorce, *id.* § 11.07.010(2)(a), a participant can always re-designate his ex-spouse as beneficiary after the divorce.

[6] "As of 1993, forty-four states and the District of Columbia had slayer statutes; four other states applied a common law bar." Jeffrey G. Sherman, *Mercy Killing and the Right to Inherit*, 61 U. Cin. L. Rev. 803, 805, 876 n.12 (1993), quoted in *Emard v. Hughes Aircraft Co.*, 153 F.3d 949, 959-60 n.11 (9th Cir. 1998), *cert. denied*, 119 S.Ct. 903 (1999). While such statutes " 'vary considerably from jurisdiction to jurisdiction,' " *id.*, to *amici*'s knowledge no court has held that ERISA preempts a slayer-revocation statute.

beneficiary.' " *Emard v. Hughes Aircraft Co.*, 153 F.3d 949, 960 n.11 (9th Cir. 1998), *cert. denied*, 119 S.Ct. 903 (1999) (quoting Natalie B. Choate, *Qualified Plan and IRA Distributions: The Year of Death*, CA 43 ALI-ABA 191, 196 (1996) (citing IRS Letter Ruling 8908063 (Nov. 30, 1988))). The burden on a plan of having to conform to state slayer-revocation statutes is indistinguishable from that imposed by Washington's divorce-revocation rule. In either situation, a plan need take no action while the relevant factual questions are determined by the courts. *See* Model Probate Code § 2-803(h)(2). Neither anti-slayer rules nor divorce-revcation- rules have a sufficient connection to ERISA's core concerns to be preempted.

3. Similarly unpersuasive is petitioner's contention that Washington's divorce-revocation rule "has a 'connection with' an ERISA plan because it interferes with the nationally uniform administration of employee benefit plans." Pet. Br. 17. While petitioner correctly notes that the purpose of ERISA preemption is to protect plans from "the administrative and financial burden of complying with a hodge-podge of differing and inconsistent state and local regulation," *id.* at 17-18, this state law suit between competing beneficiaries, to which no ERISA plan is a party, imposes at most a *de minimis* burden on plans.

As explained above, under the Washington statute, a plan "is not liable" if it transfers the asset in reliance on the governing instrument before it receives "written notice" as to the dissolution of the marriage and the existence of a dispute. Wash. Rev. Code § 11.07.010(3)(a) & (d). Where the plan receives written notice "of a dispute between the former spouse" and other beneficiaries, it "may, without liability, notify in writing" the parties as to "the existence of the dispute or its uncertainty as to who is entitled" to the asset. *Id.* § 3(b). Beyond that, the plan need do nothing until the dispute is resolved. Alternatively, the plan can—but need

not—transfer the asset to the designated beneficiary and demand security "for any liability, loss, damage, costs, and expenses for and on account" of the transfer. *Id.* § (3)(c). Petitioner is thus mistaken in asserting that "ERISA plans would be threatened with the substantial risk" of having to "pay[] the same benefits twice." Pet. Br. 26. And as a practical matter, the plan need do no more than send a form letter to the competing claimants. *See* Wash. Rev. Code § 11.07.010(3)(b). Such a "burden" is simply too inconsequential to render this important state law preempted.

Petitioner misapprehends the operation of the Washington statute in asserting that "[p]lan administrators . . . do not automatically receive notice of the divorce of a plan participant and designated beneficiary, and thus often lack knowledge of the very fact that may trigger the applicability of state divorce-revocation laws." Pet. Br. 26. Under the statute, the burden of notice is placed on those challenging a pre-divorce beneficiary designation. The plan "is not liable" if it makes payment before it receives "actual knowledge of the dissolution . . . of marriage." Wash. Rev. Code § 11.07.010(3)(a).

Even if one views Wash. Rev. Code § 11.07.010 as subjecting a plan to "regulation," it does not follow that Washington's rule is so burdensome as to warrant pre-emption. Most of the financial institutions who provide ERISA plans with insurance and pension products also sell such products to Washington's citizens outside of ERISA plans. For example, in 1998, of the 455 companies that sold life insurance in Washington State, just twenty-two sold only group plans.[7] *See* State of Washington, Office of the

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[7] While employer-provided group life insurance is typical of ERISA employee welfare benefit plans, not all group insurance is subject to ERISA. Some is purchased by plans not subject to ERISA, *see* 29 U.S.C. § 1003(b)(1) & (2), or offered through professional associations. *See*

Insurance Commissioner, *1998 Washington Market Share, Line of Business: Life and Annuity* <http://www.insurance.wa.gov/autorizeindex/98ReportAppendix/98AuthLAH_All.pdf>. The great majority of insurance companies doing business in Washington thus sell policies to individuals, *see id.*, and are, of course, subject to the State's divorce-revocation rule.[8] As life insurers are already knowledgeable as to the workings of Washington's divorce-revocation rule, the " 'administrative and financial burden of complying' " with the rule (Pet. Br. 18 (citation omitted)) is minimal.

Similarly, most ERISA pension plans are administered by large financial institutions such as banks, investment companies and insurance companies. *See* U.S. Department of Labor, Pension and Welfare Benefits Administration, *Final Report: Study of 401(k) Plan Fees And Expenses* § 2.7.1 (1998) ("in a recent survey, it was estimated that 59% of 401(k) plans use bundled services from full service providers" such as mutual funds, banks and insurance companies). These institutions likewise sell investment products such as annuities and IRAs to individuals in Washington State and are familiar with the workings of trusts and joint bank accounts as well as the divorce-revocation rule. To the extent the Washington statute arguably places an administrative and financial burden on an ERISA plan, it is too insubstantial to warrant preemption.

Petitioner further asserts that "[i]n many instances, . . . it would be difficult, if not impossible, for plan administrators

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American Council of Life Insurance, *ACLI Life Insurance Fact Book 1999* 18 (1999).

[8] In 1998, life insurance companies doing business in Washington collected $2.58 billion in premiums on ordinary life policies. This was more than six times the amount of premiums collected on group policies. *See 1998 Washington Market Share Line of Business: Life and Annuity* <http://www.insurance.wa.gov/autorizeindex/98ReportAppendix/98AuthLAH_Top40.pdf>.

to determine which state's law governed, given the possibility that the contesting claimants, the plan administrator, the divorce court, and the probate proceedings could be located in two or more different states." Pet. Br. 25-26. The Washington statute, however, expressly limits its reach to divorce decrees entered "by a superior court of this state." Wash. Rev. Code § 11.07.010(1); *Henley v. Henley*, 974 P.2d 362, 365 (Wash. Ct. App. 1999). Moreover, the same issue arises whenever a decedent in a State with a divorce-revocation rule leaves nonprobate assets, whether they are ERISA assets or not. Most significantly, under Washington's statute, plan administrators do not have to determine which State's law controls. They can leave this question to the claimants or the courts to resolve.[9] *See id.* § 11.07.010(3)(b).

4. Petitioner further takes issue with the Washington Supreme Court's conclusion that the statute's "burden on ERISA plans 'is too slight to overcome the presumption against preemption of state family and family property law.' " Pet. Br. 22 (quoting Pet. App. 21a-22a). Petitioner asserts that Section 514(b)(7), 29 U.S.C. § 1144(b)(7), the provision of ERISA's express preemption section that saves QDROs from preemption, represents the entire realm of state domestic relations law that Congress intended to save from preemption. *See* Pet. Br. 23 (citing 29 U.S.C. § 1144(b)(7)). In petitioner's view, "Congress's decision to create a limited exception in order to permit this carefully circumscribed type of state-law involvement in ERISA benefit allocation decisions confirms that, outside the context of QDROs, Congress intended ERISA to preempt all other attempts to

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[9] Petitioner further contends that "ERISA plan administrators . . . may face liability under ERISA's provisions for failure to comply with the terms of the applicable plan or for breach of fiduciary duty if they administer the plan in accordance with the state statute rather than the governing plan documents." Pet. Br. 26. This argument is without merit. If the Court holds that ERISA does not preempt Washington's statute, then a plan administrator cannot be held liable.

use state domestic relations law to override ERISA plan beneficiary designations." Pet. Br. 24.

The Court, however, has questioned whether ERISA § 514(b)(7) was even necessary "to save domestic relations orders from pre-emption," stating that "another plausible construction of Congress' action . . . [is] that Congress thought that some courts had erroneously construed § 514(a) as pre-empting such orders." *Mackey v. Lanier Collection Agency & Serv. Inc.*, 486 U.S. 825, 839 (1988). As *Mackey* indicates, Section 514(b)(7) merely "served the purpose of correcting the error, thus clarifying the original meaning of " Section 514(a). *Id.*

Moreover, even if Section 514(b)(7) is necessary to save QDROs from preemption, it does not follow that all other applications of state domestic relations law are preempted. The reason a QDRO is saved from preemption is because it effects an assignment or alienation of a participant's benefits; a QDRO "relate[s] to" a plan because ERISA expressly requires that "[e]ach pension plan shall provide that benefits provided under the plan may not be assigned or alienated." 29 U.S.C. § 1056(d)(1). Thus, absent the savings clause of Section 514(b)(7), a domestic relations order assigning a participant's pension benefits to an ex-spouse would be preempted.[10]

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[10] Prior to the enactment of the Retirement Equity Act of 1984, which contained the QDRO provisions, "the judicial consensus [was] that neither antialienation nor preemption should insulate pension wealth from the reach of state domestic relations jurisdiction." Langbein & Wolk, at 548. It has been suggested that "[i]t is most likely that Congress simply did not consider the issues raised by a potential conflict between ERISA and state domestic relations law." William J. Kilberg & Catherine L. Heron, *The Preemption Of State Law Under ERISA*, 1979 Duke L. J. 383, 417. This itself is legally significant. *See Dillingham*, 519 U.S. at 331 ("Given the paucity of indication in ERISA and its legislative history of any intent on the part of Congress to pre-empt [state labor laws] we are reluctant to alter our ordinary 'assumption that the historic police powers of the States were not superseded by the Federal Act.'") (citation omitted).

But where, as here, a divorce decree does not require a plan participant to provide ERISA plan benefits to a former spouse, it does not effect "the creation, assignment, or recognition of a right to any benefit payable with respect to a participant." 29 U.S.C. § 1056(d)(3)(A). *See also id.* §§ (d)(3)(B)(ii)(I) (defining a "domestic relations order" as "any judgment, decree or order (including approval of a property settlement agreement) which relates to the provision of child support, alimony payments, or marital property rights to a . . . former spouse . . . or other dependent") & (B)(i) (defining QDRO as "a domestic relations order which creates or recognizes the existence of an alternate payee's right to . . . receive all or a portion of the benefits payable with respect to a participant under a plan"). Rather, the plan participant fully retains those rights and the power to revoke a beneficiary designation. If Mr. Egelhoff had immediately changed his beneficiary designations to remove his ex-wife, he would not have effected an "assignment" or "alienation" under § 1056(d)(1). That Washington law changes the beneficiary designation for him does not alter this conclusion. *See, e.g., Black's Law Dictionary* 72 (6th ed. 1990) (defining "alienation" as "[e]very mode of passing [property] by act of the party, as distinguished from passing it by the operation of law").

In any event, petitioner's contention that Section 514(b)(7) establishes that ERISA preempts "all other attempts to use state domestic relations law to override ERISA plan beneficiary designations," Pet. Br. 24, collides head on with "the strong presumption against preemption" of traditional exercises of the States' authority, *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 523 (1992); *Dillingham*, 519 U.S. at 331, and the rule that Congress' intent to preempt state law must be "clear and manifest." *Cipollone*, 505 U.S. at 516 (quoting

Rice, 331 U.S. at 230). The Court should reject this theory, which relies on Congressional silence to preempt a traditional exercise of state authority. *See Hisquierdo*, 439 U.S. at 581 ("when state family law has come into conflict with a federal statute," review is limited to determining "whether Congress has 'positively required by direct enactment' that state law be pre-empted.'"). *Id.* (quoting *Wetmore v. Markoe*, 196 U.S. 68, 77 (1904)).

B. Washington's Divorce-Revocation Statute Does Not Conflict With ERISA's Substantive Provisions

Petitioner also argues that Washington's divorce-revocation rule conflicts with ERISA's substantive provisions. These arguments, however, are largely recast versions of petitioner's express preemption theories. They neither establish that "'compliance with both federal and state regulations is a physical impossibility,'" or that " 'state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.' " *Boggs*, 520 U.S. at 844 (quoting *Gade v. National Solid Wastes Management Assn.*, 505 U.S. 88, 98 (1992)).

Petitioner's first asserted conflict is that § 11.07.010 "directly conflicts with ERISA's definition of "beneficiary.' " Pet. Br. 28. According to petitioner, "ERISA defines the term 'beneficiary' as 'a person designated by a participant, or by the terms of an employee benefit plan, who is or may become entitled to a benefit thereunder." *Id.* (quoting 29 U.S.C. § 1002(8)). According to petitioner, "under the terms of the applicable . . . plans, benefits are to be distributed to the person listed on the plan participant's beneficiary designation form on file with the plan administrator" and thus she is the "*only* individual who meets ERISA's definition of 'beneficiary.' " Pet. Br. 28-29.

Petitioner's argument fails because ERISA's definition of the term "beneficiary" contemplates contingent beneficiaries. Each of the respondents, who are Mr. Egelhoff's children—

including a minor child—is "a person designated . . . by the terms of an employee benefit plan, who is or may become entitled to a benefit thereunder." 29 U.S.C. § 1002(8). *See also* J.A. 40 ("If there is no surviving spouse," pension benefit will be distributed "to your children in equal shares."). Furthermore, the pension plan expressly recognizes that in the event "you have an invalid beneficiary designation," the assets would not be distributed to the beneficiary designated by the participant but to the contingent beneficiaries designated by the plan. J.A. 40. There is thus no conflict between § 11.07.010 and ERISA's definition of the term "beneficiary."

2. Equally misplaced is petitioner's related contention that § 11.07.010 conflicts with ERISA provisions such as the requirement that "plan fiduciaries . . . administer plans in accordance with the plan documents, which must specify the method for determining benefit payment rights and be available for review by plan beneficiaries." Pet. Br. 31. According to petitioner, "Congress intended for ERISA plans to specify in the plan documents the method by which beneficiary rights are to be determined and plan benefits are to be paid." *Id.* "Congress intended that the rights of ERISA plan beneficiaries would be determined by reference to readily accessible ERISA plan documents, not on the basis of varying and potentially inconsistent state laws." *Id.* at 33.

This argument erroneously asserts that ERISA plans determine beneficiary status solely by reference to the plan documents and can entirely ignore state law in that process. That cannot be the case. State statutes and common law frequently ascribe the legal consequences of important life events and relationships; plan administrators must abide by these determinations.

For example, what if a designated beneficiary has been missing for the period of years following which the State presumes a person to be dead? *See* 25A C.J.S. *Death* § 6 (1966). Could the plan disregard a state court determination

that the designated beneficiary is dead and refuse to pay benefits to the contingent beneficiaries? What if a State recognizes common law marriage? *See* 55 C.J.S. *Marriage* § 10 (1998). Could the plan disregard the claim of a person who asserts that while she was not formally married, under state law, she is a surviving spouse? What if two persons each claimed to be the surviving spouse or a person born out of wedlock claimed to be a participant's surviving child? Would not the plan look to state law and the state courts to resolve these questions?

In short, the rights of ERISA plan beneficiaries are not solely "determined by reference to . . . plan documents." Pet. Br. 33. The States are the principal expositors of domestic relations law. Petitioner's contention amounts to nothing more than "[a] mere conflict in words," which the Court has recognized "is not sufficient" to preempt "[s]tate family and family-property law." *Hisquierdo*, 439 U.S. at 581.

3. Invoking *Boggs*, petitioner asserts that "if permitted to withstand ERISA preemption, § 11.07.010 would undermine ERISA's goal of protecting plan participants and their beneficiaries." Pet. Br. 35. But in *Boggs*, a state law conflicted with ERISA's clear and substantial federal interest in protecting surviving spouses. *See* 520 U.S. 843-44. Here, by contrast, there is no "'clear and substantial' federal interest[]" requiring conflict preemption, *Hisquierdo*, 439 U.S. at 581 (citation omitted), where a former spouse claims substantial assets based on her ex-husband's failure to change his beneficiary designation prior to an automobile accident and his subsequent death.

ERISA does, of course, provide a mechanism for ex-spouses to protect their interest as beneficiaries—the QDRO provision—which "defers strongly to state law" by "subject-[ing] pension wealth to state domestic relations jurisdiction as fully as possible." Langbein & Wolk, *Pension and Employee Benefit Law* at 557. Indeed, under Washington's community

property law, petitioner could have sought a portion of Mr. Egelhoff's 401k. Wash. Rev. Code § 26.16.030. Petitioner, however, disclaimed her interest in it. *See* J.A. 33. She likewise could have sought to be retained by her ex-husband as a beneficiary on his life insurance policy. *See* Wash. Rev. Code § 11.07.010(2)(b)(ii). There is thus no basis to transform ERISA's purpose into providing financial windfalls to ex-spouses at the expense of other legitimate claims such as those of dependent children. In short, it is petitioner's interpretation of ERISA—not Washington law—which conflicts with ERISA's purpose of protecting the "well-being and retirement income security of . . . workers . . . and their dependents." 29 U.S.C. § 1001b(a)(2).

4. Finally, petitioner contends that § 11.07.010 "conflicts with ERISA's prohibition against alienation of retirement benefits." Pet. Br. 36. As petitioner acknowledges, ERISA's anti-alienation provision, § 206(d)(1), applies only to pension plans. *See* 29 U.S.C. §1056(d)(1). Thus, even if it was the case that § 11.07.010 conflicts with this provision, ERISA section 206(d)(1) does not prevent operation of Washington's statute to alter the disposition of the life insurance proceeds. *See Mackey*, 486 U.S. at 841.

Washington's statute does not, however, conflict with either the text or purpose of Section 206(d)(1). The statute does not effect either an "assignment or alienation" of petitioner's property right in Mr. Egelhoff's pension as those terms are commonly understood. As a leading authority explains, "[a] general [statutory] prohibition against assignment is interpreted to mean assignment by voluntary act and not to include assignment by operation of law." 3 Samuel Williston, *A Treatise on the Law of Contracts* § 422, at 137 (Walter H.E. Jaeger ed., 3d ed. 1960). *See also Blacks' Law Dictionary* at 119 (defining "assignment" as "[t]he transfer by a party of all of its rights to some kind of property"); *id.* at 72 (defining "alienation" as "[e]very mode of passing [property] by the act of the party, as distinguished from passing it by the

operation of law"). The plain meaning of the terms "assignment" and "alienation" demonstrates that ERISA Section 206(d)(1) does not prohibit transfers of pension rights that occur by operation of state law. ERISA Section 206(d)(1) does not contain a sufficiently clear and manifest expression of Congress' intent to warrant conflict preemption of Washington's divorce-revocation rule.

Nor does the Internal Revenue Service's definition of the terms "assignment or alienation," Pet. Br. 38, support the opposite conclusion. Respondents' right to their father's pension is not the result of a "direct or indirect arrangement . . . whereby a party acquires from a participant or beneficiary a right or interest enforceable against the plan . . . ." 26 C.F.R. § 1.401(a)-13. Respondents did not acquire their rights to the pension through an "arrangement" with their father (the participant) or petitioner (the putative beneficiary). Their rights arose because as part of the divorce settlement, petitioner voluntarily disclaimed her rights under Washington law in her ex-husband's pension. Washington law therefore properly treated her as having pre-deceased her ex-husband. Respondents' right to their late father's pension is not the result of an assignment or alienation, but rather, the distribution of the assets in accordance with the plan terms.

This construction is consistent with the anti-alienation provision's purpose. As the Court explained in *Boggs*, the anti-alienation provision " 'reflects a considered congressional policy choice, a decision to safeguard a stream of income for pensioners . . . and their dependents . . .'." 520 U.S. at 852 (quoting *Guidry v. Sheet Metal Workers Nat'l Pension Fund*, 493 U.S. 365, 376 (1990)).[11] By the terms of

[11] Petitioner contends that because the property settlement "does not comply with the statutory QDRO requirements designed to assure clarity and ease of application, ERISA requires that the plan be administered and benefits be paid without regard to the non-compliant order." Pet. Br. 41 (citation omitted). Petitioner thus suggests that if the order in this case had met the requirements of a QDRO, it would not be preempted.

petitioner's divorce and property settlement, she was no longer Mr. Egelhoff's dependent. There is thus no conflict between Washington's divorce-revocation rule and ERISA's anti-alienation provision.

CONCLUSION

The judgment of the Supreme Court of Washington should be affirmed.

Respectfully submitted,

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September 18, 2000

This argument is mistaken. Under the statutory definition, the agreement could not be a QDRO because it does not "create[] or recognize[] the existence of an alternate payee's right to, or assign[] to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan." 29 U.S.C. § 1056(d)(3)(B)(i). Mr. Egelhoff was not an "alternate payee," but the plan participant. *See* 29 U.S.C. § 1056(d)(3)(K). As the Department of Labor has explained, "[f]or purposes of the QDRO provisions, an alternate payee cannot be anyone other than a spouse, former spouse, child, or other dependent of a participant." U.S. Department of Labor, *QDROs: The Division of Pensions Through Qualified Domestic Relations Order* 4 <http://www.dol.gov/dol/pwba/public/pubs/qdro.htm>.

That Congress did not include in the statutory definition of DROs and QDROs, orders under which a participant retained the full amount of his or her pension rights, demonstrates that Congress intended that an agreement in which an ex-spouse renounces her interest in a participant's pension is not an assignment or alienation.

No. 99-1529

SEP 18 2000

In The

SUPREME COURT OF THE UNITED STATES

DONNA RAE EGELHOFF,
Petitioner,
v.
SAMANTHA EGELHOFF, A MINOR, BY AND THROUGH HER NATURAL PARENT KATE BRENINER, AND DAVID EGELHOFF,
Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WASHINGTON

BRIEF OF THE STATES OF WASHINGTON, ARKANSAS, COLORADO, MASSACHUSETTS, MONTANA, OKLAHOMA, UTAH, VERMONT, AND WEST VIRGINIA, AS AMICI CURIAE IN SUPPORT OF RESPONDENTS

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INTEREST OF THE AMICI CURIAE

The State of Washington, together with the other amicus curiae, respectfully submit this brief in support of Respondents. The amici states have two vital interests to present to the Court.

First, amici states have a strong interest that the Court apply traditional principles of pre-emption to the Employee Retirement Income Security Act (ERISA). Under traditional principles, ERISA pre-emption reflects the narrow scope of federal interests necessary to the purposes of ERISA, without unnecessarily pre-empting state laws that might superficially relate to an ERISA plan. In other areas of federal regulation, the Court continually emphasizes the presumptions that favor state law, except where there is a clear showing that Congress intended to preclude states from a particular field. This Court's initial decisions interpreting ERISA, however, strayed from these principles and announced an analysis that examined whether state law "relates to" a ERISA benefit plan. This approach effectively eliminated the normal presumption in favor of state law. Recent ERISA decisions, in contrast, have properly relied upon the normal presumptions against pre-emption by redirecting the pre-emption analysis to the provisions of ERISA. The amici states have a strong interest in this narrower approach to ERISA pre-emption, which is consistent with federalism values that presume the states will define the property rights arising out of marriage, divorce, and the transfer of property upon death.

Second, amici states are concerned with preserving application of the state laws that determine validity of a beneficiary designation, and the effect of marriage, divorce, and other actions on that designation. The amici states submit this brief to describe to the Court how state laws regarding beneficiaries protect the interests of state citizens during marriage, divorce, and after death. The interest of the states in this area is particularly high, because pension and welfare

benefits are often the largest financial asset earned during a marriage or a lifetime of employment. State laws that address beneficiary designation ensure fairness and mutuality during marriage, divorce, and when property is transferred after death. Washington's statute, for example, reflects the common understanding and the legal reality that divorce distributes all of the property held by two ex-spouses. This serves a presumed intention to cease designating an ex-spouse as a beneficiary after divorce has fully addressed the rights of the ex-spouse and eliminated his or her rights in a pension or as an insurance beneficiary. Other states have analogous laws that determine the validity of a beneficiary designation in a variety of related circumstances.

ERISA does not regulate the domestic matters addressed by these various state laws. The amici states, therefore, are vitally concerned that ERISA's regulation of pension and welfare plans not be interpreted as congressional intent to pre-empt state laws that address validity of beneficiary designations, which are vital to ensuring fair legal relationships during marriage, divorce, and in other circumstances. States are interested in allowing their citizens to continue relying on state marriage and probate laws to define their legal rights and expectations, without having inconsistent results for a beneficiary designation in a benefit plan regulated under ERISA.

Amici states therefore ask the Court to affirm that ERISA did not pre-empt application of Washington law to determine that the beneficiary of the pension plan and insurance plan had been revoked as a matter of law after divorce.

SUMMARY OF ARGUMENT

In recent decisions, the Court has shifted away from determining pre-emption of any state law that "relates to" an ERISA benefit plan. Instead, the Court has discerned Congress'

intent to pre-empt state laws by looking to the provisions and purposes of ERISA. With these recent cases, the Court has provided a meaningful application of the strong presumptions against pre-emption of state powers over subjects like domestic relations, property ownership, and the transfer of property upon death. State powers should not be pre-empted where no particular provision of ERISA speaks to the subject, because Congress presumably did not intend to displace those traditional state powers.

This Court should now clarify that ERISA involves traditional field pre-emption principles, where the field that is pre-empted is defined by the procedural and substantive provisions of ERISA. With this field pre-emption approach to ERISA, the Court preserves the federalism relationship between the states and the federal government, ensuring that state laws continue to govern local civil matters, except where Congress pre-empts states from a field.

When these recent pre-emption decisions are applied to a state law that determines whether an ex-spouse is a surviving beneficiary to an insurance policy or pension benefit, the Court should start by recognizing that this type of state law serves the state's interest in defining marital property and in ensuring a fair and complete distribution of property during divorce. Marriage, divorce, and probate laws are historically the province of the states. State laws that address beneficiaries reflect other state laws that require an employee to name a spouse as a beneficiary, which protects community property rights. Invalidating an ex-spouse as beneficiary merely reflects the expectations of the former spouse, that the divorce eliminates the marital property relationship that caused the designation in the first place.

Moreover, the Court should recognize that state law already affects the validity of beneficiaries named in ERISA plans. Plans must deal with issues such as whether there is a valid marriage, who is a lawful child, or who has survived in

circumstances involving simultaneous death of an employee and beneficiary. If state law were not applicable, then other state objectives would be frustrated, such as the application of the common state slayer laws that prevent a murderer from being the beneficiary of a victim's pension or life insurance.

State laws provide the details that fulfill the expectations of people in their domestic relationships. ERISA, in contrast, does not speak to these domestic and local issues. Its provisions do not show congressional intent to pre-empt state laws in this field. Rather, the preservation of state law in this case is consistent with Congress' overarching purpose of protecting employees who rely on these laws to order their affairs and ERISA plan benefits for distribution of their property after death.

In addition, the Court should consider the broad preservation of state authority as it applies to insurance. Under ERISA's savings clause for state insurance laws, it creates no field of pre-emption that precludes application of state laws in the context of determining lawful beneficiaries to an insurance policy.

ARGUMENT

I. CONGRESSIONAL INTENT TO PRE-EMPT STATE LAW SHOULD BE LIMITED TO FIELD PRE-EMPTION DEFINED BY THE PROVISIONS AND OBJECTIVES OF ERISA

Every state has laws that defines ownership of property, marital relations, and matters of inheritance. These state laws ensure the fairness and mutuality of marriage by defining the rules of marital property, divorce, and inheritance. The citizens of the states rely on those rules, living their lives and developing significant expectations based upon them. It would most likely exceed the constitutional limits on federal power if Congress tried to do what the states have accomplished in protecting the

expectations and understandings of citizens with regard to marriage, divorce, and death.[1]

ERISA, however, regulates pension plans, life insurance, and other benefits that arise within the backdrop of state laws governing marriage, divorce, and inheritance. ERISA pre-emption should recognize that these traditional areas of state laws existed before ERISA. By starting with the presumption that these state laws are to be preserved, pre-emption is limited to fields defined by the provisions and purposes of ERISA. This approach to pre-emption accomplishes the intentions of Congress as expressed in the provisions of ERISA, while assuring employees that ERISA benefit plans will not frustrate normal expectations rooted in the state laws governing marriage, divorce, and inheritance.

A. Recent Decisions Properly Implement The Strong Presumption Against Pre-emption Of State Law By Focusing On The Provisions And Purposes Of ERISA

1. "In all pre-emption cases, and particularly in those in which Congress has 'legislated in a field which the States have traditionally occupied,' we 'start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that is the clear and manifest purpose of

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[1] In *United States v. Morrison*, 120 S. Ct. 1740 (2000), this Court ruled that the Commerce Clause did not provide Congress with authority to adopt a provision of the Violence Against Women Act. According to the Court: "The Constitution requires a distinction between what is truly national and what is truly local." *Morrison*, 120 S. Ct. at 1754. The Court rejected the argument that commerce was implicated owing to the impact of violence against women on the national economy. The Court rejected this reasoning because it could also justify federal regulation of "family law and other areas of traditional state regulation since the aggregate effect of marriage, divorce, and childrearing on the national economy is undoubtedly significant". *Id.* at 1753.

Congress.'" *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996) (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)). As explained further in the next sections, the text of 29 U.S.C. § 1144(a) (ERISA § 514(a)) reflects congressional intent that pre-emption arise from the "provisions" of ERISA. This approach is like this Court's traditional approach to field pre-emption, and ensures that the scope of pre-emption does not undermine or eliminate the presumption against pre-emption of traditional state power.

2. The first two decades of ERISA pre-emption decisions do not provide a meaningful application of the normal presumptions that ERISA does not pre-empt state law. The Court's initial ERISA decisions fail because they try to find congressional intent in the statement of § 514(a), that the "provisions" of ERISA "shall supercede any and all State laws insofar as they may now or hereafter *relate to* any employee benefit plan". 29 U.S.C. § 1144(a) (emphasis added); *see Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85 (1983). Because ERISA benefits arise at the intersection of a number of traditional areas of state law, it is not surprising that a number of state laws seem to "relate to" ERISA benefit plans. These original pre-emption rulings placed a cloud over state authority, enabling arguments that anything provided as an ERISA plan was immune from state regulation.

3. In recent rulings, the Court has properly rejected the literal application of the broad words of § 514(a), holding that congressional intent cannot be reliably discerned from the words "relate to":

> "If 'relate to' were taken to extend to the furthest stretch of its indeterminacy, then for all practical purposes pre-emption would never run its course, for 'really, universally, relations stop nowhere.' But that, of course, would be . . . to read the presumption against pre-emption out of the law whenever Congress speaks to the matter with generality." *New York State Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 655 (1995) (citation omitted).

Instead, the intent of Congress is best determined by evaluating the "objectives of the ERISA statute as a guide to the scope of the state law that Congress understood would survive". *Id.* at 656. The New York surcharge in that case had "an indirect economic influence" on ERISA plans, but did "not bind plan administrators to any particular choice and thus function as a regulation of an ERISA plan itself". *Id.* at 659.

Travelers Insurance thus adopted a better approach to determining congressional intent by focusing ERISA pre-emption on whether state law was "regulating the plan itself" or interfering with the "objectives" of the ERISA statute. This properly implements the text of § 514(a), providing that pre-emption arises from "the provisions of this chapter and subchapter III of this chapter". 29 U.S.C. § 1144(a). This is no different than the Court's traditional approach to field pre-emption, where congressional intent to pre-empt is discerned from the nature and scope of the federal law. The express language of § 514(a) is congressional confirmation that the fields defined by provisions of ERISA shall pre-empt state laws that might purport to supplement or duplicate these provisions.

The approach in Travelers was continued in *DeBuono v. NYSAA-ILA Medical & Clinical Services Fund*, 520 U.S. 806, 813 (1997). The *DeBuono* opinion explains that one must go beyond the "unhelpful text" of § 514(a), with its expansive reference to state laws that "relate to" an ERISA plan. To overcome the "normal presumption against pre-emption," the Court again turns to the provisions of the ERISA statute to indicate "the scope of state law that Congress understood would survive". *Id.* at 813-14. Accordingly, the regulation and taxation of health care facilities is a "field that has been traditionally occupied by the States." *Id.* at 814. The Court

required the opponents of that state law to show that Congress intended that ERISA would pre-empt that type of state law.

California Division of Labor Standards Enforcement v. Dillingham Construction, Inc., 519 U.S. 316 (1997), also illustrates again why the various methods for analyzing the words "relates to a plan" in § 514(a) do not reflect congressional intent to pre-empt state law. *Dillingham Construction* involved a California law requiring contractors on public works to pay prevailing wages. California applied its law to an apprenticeship program that was itself an ERISA benefit. *Dillingham Construction* recognized that nothing in ERISA overcame the presumptions that protected this area of traditional state regulation.

> "[The] substantive standards to be applied to apprenticeship training programs are, however, quite remote from the areas with which ERISA is expressly concerned – reporting, disclosure, fiduciary responsibility, and the like. . . . A reading of § 514(a) resulting in the pre-emption of traditional state-regulated substantive law in those areas where ERISA has nothing to say would be unsettling." *Dillingham Constr.*, 519 U.S. at 330 (citation omitted) (internal punctuation omitted).

This ruling in *Dillingham Construction* finds pre-emption by examining the provisions and objectives of ERISA itself, asking whether ERISA has anything to say about the subject.

4. No matter how this case is decided, the Court should confirm that the scope of ERISA pre-emption is not "expansive" and not to be derived from the breadth of the words "relate to". The focus on "relates to" is an illusory test "since, as many a curbstone philosopher has observed, everything is related to everything else". *Dillingham Constr.*, 519 U.S. at 335 (Scalia, J., concurring).

Instead of focusing on the words "relates to", the Court should adopt the approach suggested by Justices Scalia and Ginsburg in *Dillingham Construction*. Under this approach, the phrase "relates to" "is meant, not to set forth a test for pre-emption, but rather to identify the field in which ordinary field pre-emption applies–namely, the field of laws regulating 'employee benefit plans described in section 1003(a) of this title and not exempt under section 1003(b) of this title,' 29 U.S.C. § 1144(a)". *Dillingham Constr.*, 519 U.S. at 336. The Court should "apply ordinary field pre-emption, and, of course, ordinary conflict pre-emption" to ERISA. *Id.*

Under this pre-emption approach, the states retain full authority to legislate over matters of property ownership, inheritance, and marriage so long as state law does not enter a filed where federal regulation is exclusive or conflict with implementation of ERISA. *See Boggs v. Boggs*, 520 U.S. 833 (1997) (applying conflict pre-emption to void a testamentary transfer). This approach to pre-emption preserves the traditional state laws that form the context in which individual employees understand their pensions, life insurance policies, and other benefits regulated by ERISA.

B. ERISA Pre-emption Should Preserve The Balance Of Federalism

1. Applying traditional field and conflict pre-emption analysis to ERISA is consistent with important principles of federalism. The Court's federalism jurisprudence "requires that Congress treat the States in a manner consistent with their status as residuary sovereigns and joint participants in the governance of the Nation." *Alden v. Maine*, 527 U.S. 2240, 2263 (1999). This Court has been vigilant in enforcing the structural limits in the Tenth and Eleventh Amendments on the power of Congress to commandeer state government or waive

state sovereign immunity.[2] The principles of federalism behind these decisions apply equally in an ERISA pre-emption case. This is because a pre-emption case "is a case about federalism, that is, about respect for the constitutional role of the States as sovereign entitles". *Geier v. American Honda Motor Co.*, 120 S. Ct. 1913, 1928 (2000) (Stevens J., dissenting) (citation omitted) (internal punctuation omitted).

2. A significant value of our Constitutional federalism is that it allows for local variation in the law to reflect local differences in the values and expectations of the citizens of each state. Civil laws concerning marriage, divorce, and inheritance emerge from the fabric of society where state laws predominate. This Court has long upheld the presumptive power of the states in these areas, subject only to Constitutional restrictions.[3]

Preservation of state authority enables different approaches to the solution of the societal problems.

> "To stay experimentation in things social and economic is a grave responsibility. Denial of the right to experiment may be fraught with serious consequences to the Nation. It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country." *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).

[2] *See New York v. United States*, 505 U.S. 144 (1992); *Printz v. United States*, 521 U.S. 898 (1997); *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996); *Florida Prepaid Postsecondary Educ. Expense Bd. v. College Savings Bank*, 527 U.S. 627 (1999); *Kimel v. Florida Bd. of Regents*, 120 S. Ct. 631 (2000).

[3] *Mager v. Grima*, 8 How. 490, 493 (1850) (every state has power to regulate the manner and term upon which property within its dominion may be transmitted by will or inheritance); *Labine v. Vincent*, 401 U.S. 532, 537 (1971) (states make laws concerning intestate succession); *Boddie v. Connecticut*, 401 U.S. 371, 385 (1971) (Douglas, J., concurring) (power of state over marriage and divorce is complete, except as limited by constitutional provisions); *Loving v. Commonwealth of Virginia*, 388 U.S. 1, 7 (1967) (marriage is a "social relation subject to the State's police power").

Congress, of course, had no intention to federalize marriage, divorce, or inheritance as a byproduct of ERISA regulations of pension plans or insurance plans.

3. When pre-emption is consistent with federalism, it ensures that state laws implement commonly held expectations about property, marriage, divorce, and death. For example, a person with one private life insurance policy and a second life insurance plan provided by an employer would expect state law to apply to both policies. If ERISA pre-empts, it frustrates his expectation that both policies will reflect his marital status or his divorce in the same way.

II. ERISA DOES NOT EVIDENCE CONGRESSIONAL INTENT TO ELIMINATE STATE POWER TO DETERMINE VALIDITY OF BENEFICIARIES TAKING PROPERTY AFTER DEATH

To show that ERISA § 514(a) pre-empts application of Wash. Rev. Code § 11.07.010, petitioners must overcome a strong presumption that Congress intended to preserve state law. Pre-emption requires a showing by petitioners that the provisions of ERISA were intended to create a field of ERISA regulation that pre-empts states from determining the validity of beneficiaries after divorce. Amici states show in the following sections that the state laws before the Court reflect local interests and understandings regarding marital property, and that ERISA does not address these matters.

1. Washington law recognizes that a spouse is typically the designated beneficiary to pension and life insurance benefits simply because of the status as a spouse. The Washington statute that revokes beneficiary designation after divorce serves as an understanding regarding the effect of divorce. A person who divorces in Washington expects, under state law, that there will be a complete distribution of all property and debts including, community property, separate property, as well as other factors. *See* Wash. Rev. Code § 26.09.080, App. at 1a. All properties, including future interests, are accounted for and virtually all properties are divided or assigned to one of the spouses during the dissolution of marriage. *See* Kenneth Weber, 19 *Washington Practice – Family And Community Property Law* § 32.4. Retirement benefits are an asset earned during the marriage and divisible upon divorce. *E.g., In re Marriage of Chavez*, 80 Wash. App. 432, 909 P.2d 314 (1996).

When a Washington citizen undergoes a dissolution of marriage and division of property, he or she reasonably believes that the divorce proceeding extinguishes the rights of the former spouse. Wash. Rev. Code § 11.07.010 implements this expectation. It ensures complete division of marital property by applying a rule of law to all non-probate properties where a former spouse might have been named as a beneficiary. This rule enables divorced spouses to start new lives or to remarry with such beneficiary designations deemed revoked. Put simply, the ex-spouse has ceased to survive as a spouse and, as a matter of law, is not a surviving beneficiary. Numerous other states have laws that implement similar expectations regarding property.[4]

[4] Examples of analogous state laws include: Tex. Fam. Code Ann. § 3.632 (West 1997) (requiring redesignation of ex-spouse after divorce); Okla. Stat. tit. 15, § 178 (1981) (ex-spouse deemed to predecease unless redesignated); Mich. Comp. Laws § 552.191(2) (requiring divorce decrees to determine or extinguish rights of spouses in each of their life insurance, endowments, or annuities).

2. As noted above, ERISA regulates benefits that exist in a context of detailed state laws governing property, marriage, divorce, and inheritance. The following three examples illustrate analogous state laws that may affect beneficiary designations in ERISA plans.

First, the pension plan in this case recognizes that federal law requires consent of a spouse for designation of a non-spouse as a beneficiary. JA at 39-40. The determination of the validity of a beneficiary, therefore, requires reference to the state laws that determine whether or not a participant employee is lawfully married or divorced.

Second, ERISA does not explain how to determine whether a designated beneficiary "survives".[5] A variety of state laws exist to determine who survives as a matter of law in a number of situations where it would affect inheritance, ownership of property, or rights to life insurance proceeds. *E.g.*, Wash. Rev. Code § 11.05.040, App. at 3a (Uniform Simultaneous Death Act provisions for paying proceeds of life insurance when there is simultaneous death of insured and beneficiary). In a situation involving questions of survival, the ERISA plan should look to state law in order to determine the beneficiary.

Third is the slayer statute. Slayer statutes prevent a murderer from inheriting his victim's property, often invoking the legal fiction that the murderer has, as a matter of law, failed to survive the victim. *E.g.*, Wash. Rev. Code § 11.84.030, App. at 5a; *see generally Emard v. Hughes Aircraft Co.*, 153

[5] The Plan in this case provided that if an employee failed to designate, "or if you have an invalid beneficiary designation, or your beneficiary is no longer living, benefits will be paid in the following sequence: 1. To your *surviving* spouse. 2. If there is no surviving spouse, to your children in equal shares". JA at 40 (emphasis added).

F.3d 949, 960 n.11 (9th Cir. 1998), *cert. denied*, 525 U.S. 1122 (1999) (discussing slayer statutes). The state policy behind slayer statutes is to protect a property owner by eliminating profit to a person who wrongfully causes his or her death. In 1993, 44 states and the District of Columbia has slayer statutes, four states had a common law bar. *See* Jeffrey G. Sherman, *Mercy Killing And The Right To Inherit*, 61 U. Cin. L. Rev. 803, 876 n.12 (1993). In states with slayer statutes there is the expectation that one spouse will not benefit from the murder of the other spouse. However, under petitioner's theory, ERISA requires the payment of pension and insurance benefits to a beneficiary wife who murdered her husband, overriding state law.

3. It is beyond the scope of this amicus brief to address fully why application of state law to determine validity of beneficiaries does not interfere with the provisions of ERISA. The amici states, however, observe that the state law in this case is not significantly different from a slayer statute or the Uniform Simultaneous Death Act. If there was a dispute regarding the validity of petitioner's marriage, if petitioner had been a slayer or if she had died in the car accident with the decedent, state law provides for a basis for determining whether she was a valid beneficiary to nonprobate property. Wash. Rev. Code § 11.07.010 occupies the same field as the slayer laws and death acts. It provides circumstances when ex-spouses do not, as a matter of law, survive as a beneficiary.[6]

[6] Indeed, the Washington statute in questions places no real burden on ERISA plans at all because, under Wash. Rev. Code § 11.07.010(2)(b)(i), the plans may include a plain statement that statutes which otherwise would operate to revoke or disclaim a beneficiary designation upon divorce do not apply and will not override a beneficiary designation.

III. THE SAVINGS CLAUSE FOR STATE REGULATION OF INSURANCE SHOWS THAT CONGRESS HAS NOT PRE-EMPTED APPLICATION OF STATE LAW TO INSURANCE POLICIES

In 29 U.S.C. § 1144(b) (ERISA § 514(b)), Congress preserved normal state powers to regulate insurance. As part of such regulation, states can impose the type of revocation requirement and non-survivorship rule of Wash. Rev. Code § 11.07.010.

> "In areas of the law not inherently requiring national uniformity . . . state statutes, otherwise valid, must be upheld unless there is found such actual conflict between the two schemes of regulation that both cannot stand in the same area, or evidence of a congressional design to preempt the field." *Head* v. *New Mexico Bd. of Examiners in Optometry*, 374 U.S. 424, 430 (1963) (quoting *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 141 (1963)) (footnote omitted) (internal punctuation omitted).

There is no uniformity regarding the nature and regulation of the life insurance policies purchased by ERISA plans. Accordingly, even if state law is not applicable to the pension plan, the Court should consider separately the application of Wash. Rev. Code § 11.07.010 to the insurance proceeds. *See also* McCarran-Ferguson Act, 15 U.S.C. §§ 1011-1015 (saving insurance regulation for states). This broad preservation of state authority confirms that application of state law is not pre-empted in the context of the insurance policies. Analysis of pre-emption in this case should, if necessary, take into account Congress' preservation of state power in the field of insurance benefits.

CONCLUSION

For the foregoing reasons, the *amici* states respectfully request that the decision of the Washington State Supreme Court be affirmed.

Respectfully Submitted,

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APPENDIX

26.09.080 Disposition of property and liabilities—Factors. In a proceeding for dissolution of the marriage, legal separation, declaration of invalidity, or in a proceeding for disposition of property following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property, the court shall, without regard to marital misconduct, make such disposition of the property and the liabilities of the parties, either community or separate, as shall appear just and equitable after considering all relevant factors including, but not limited to:

(1) The nature and extent of the community property;

(2) The nature and extent of the separate property;

(3) The duration of the marriage; and

(4) The economic circumstances of each spouse at the time the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to a spouse with whom the children reside the majority of the time. [1989 c 375 § 5; 1973 1st ex.s. c 157 § 8.]

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11.05.040 Distribution of insurance policy when insured and beneficiary die simultaneously. Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously the proceeds of the policy shall be distributed as if the insured had survived the beneficiary. [1965 c 145 § 11.05.040. Prior: 1943 c 113 § 4; Rem. Supp. 1943 § 1370-4. Formerly RCW 11.04.210.]

Reviser's note: The subject matter of this section and RCW 11.05.050 relating to insurance also appears in RCW 48.18.390.

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11.84.030 Slayer deemed to predecease decedent. The slayer shall be deemed to have predeceased the decedent as to property which would have passed from the decedent or his estate to the slayer under the statutes of descent and distribution or have been acquired by statutory right as surviving spouse or under any agreement made with the decedent under the provisions of RCW 26.16.120 as it now exists or is hereafter amended. [1965 c 145 § 11.84.030. Prior: 1955 c 141 § 3.]

(12)

Supreme Court, U.S.
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No. 99-1529

In The

Supreme Court of the United States

DONNA RAE EGELHOFF,

Petitioner,

v.

SAMANTHA EGELHOFF, a Minor, by and through her Natural Parent KATE BREINER, and DAVID EGELHOFF,

Respondents.

On Writ Of Certiorari To The Supreme Court Of Washington

BRIEF OF *AMICI CURIAE*, THE BOEING COMPANY, THE NATIONAL ASSOCIATION OF MANUFACTURERS AND THE CHAMBER OF COMMERCE OF THE UNITED STATES, IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE*[1]

The Boeing Company ("Boeing") is an aerospace company that employs approximately 173,000 persons in business operations located in 45 states. Boeing sponsors various pension plans and welfare benefit plans that are subject to the provisions of the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001-1461 ("ERISA"), and that provide benefits to Boeing employees. Through a delegation of authority from Boeing, a committee comprised of Boeing employees acts as the administrator of Boeing's ERISA plans. Boeing is the sponsor of the pension plan and of the life insurance plans that provided the employee benefits at issue in this case.

The National Association of Manufacturers (the "NAM") is the nation's oldest and largest broad-based industrial trade association. The NAM represents 14,000 members (including 10,000 small and mid-sized companies) and 350 member associations serving manufacturers and employees in every industrial sector and all 50 states. The NAM's mission is to enhance the competitiveness of manufacturers and to improve American living standards by shaping a legislative and regulatory environment conducive to U.S. economic

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[1] Counsel for a party did not author this brief in whole or in part. No one, other than the *amici curiae* or their counsel, made a monetary contribution to the preparation or submission of this brief. Boeing has provided Petitioner Donna Rae Egelhoff with financial support in connection with her brief on the merits. Counsel for the parties have issued blanket consents for the filing of amicus briefs.

growth and to increase understanding about the importance of manufacturing to America's economic strength.

The Chamber of Commerce of the United States of America (the "Chamber") is the world's largest business federation. The Chamber has substantial membership in each of the 50 states, and through its federation of members represents more than 3,000,000 businesses and professional organizations of every size and in every sector of the economy. More than 95% are small businesses with 100 or fewer employees, and virtually all the nation's largest companies are also members of the Chamber. The Chamber thus serves as a principal voice of American business.

Boeing, the NAM and the Chamber submit this brief to express the viewpoints of employers and ERISA plan administrators[2] in connection with purported State regulation of beneficiary designations. This brief will address the unnecessary burdens and costs that such a patchwork of State regulation would impose on the beneficiary designation administration of ERISA-governed employee benefit plans. In addition, Boeing, the NAM and the Chamber are concerned that an unduly narrow application of ERISA preemption will, contrary to Congress's express intent in regulating employee benefit plans under a uniform national law, force employers to direct an increasingly greater amount of resources toward plan administration and litigation for resolving benefits

[2] Employers that sponsor ERISA plans typically act as, or have authority over, the administrators of such plans.

entitlement under the laws of the 50 States, with fewer resources available for providing actual benefits.

SUMMARY OF ARGUMENT

If the Washington Supreme Court's decision below is allowed to stand, it will defeat the purposes of ERISA, it will impose real and substantial burdens on plan sponsors and administrators, thereby jeopardizing the future of many employer-sponsored pension and welfare plans, and it will hinder the ability of participants, beneficiaries and their advisors to make informed decisions about beneficiary status and rights. By expressly incorporating a preemption provision into the ERISA statute, Congress intended to avoid these outcomes.

ERISA preempts Revised Code of Washington § 11.07.010 because the Washington law, which in effect automatically revokes a spousal beneficiary designation upon divorce, conflicts with ERISA's substantive provisions and operates to frustrate ERISA's purpose. Preemption in this instance will serve to avoid State-by-State regulation of ERISA plan beneficiary designations and to prevent the type of administrative burden on ERISA plans that Congress has sought to avoid.

Boeing, the NAM and the Chamber ask the Court to confirm the uniform national law that ERISA plans should apply in making their beneficiary payment decisions. In this way, the Court can resolve the existing confusion, especially for employers with operations in multiple States. The Court should adopt the standard

already in place under ERISA, which standard provides that an ERISA plan beneficiary is determined solely by the governing plan documents.

ARGUMENT

I. ERISA PREEMPTS REVISED CODE OF WASHINGTON § 11.07.010 BECAUSE COMPLIANCE WITH THIS AND SIMILAR STATE LAWS WOULD FRUSTRATE A FUNDAMENTAL PURPOSE OF ERISA.

The Court has previously enunciated the standard for ERISA preemption that is applicable to this case: a State law is preempted by ERISA if the State law "conflicts with the provisions of ERISA or operates to frustrate its objects." *Boggs v. Boggs*, 520 U.S. 833, 841 (1997). Likewise, where the " 'law stands as an obstacle to the accomplishment of the full purposes and objectives of Congress,' federal preemption occurs." *John Hancock Mut. Life Ins. Co. v. Harris Trust & Sav. Bank*, 510 U.S. 86, 99 (1993) (quoting *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 248 (1984)).

ERISA was enacted to protect the interests of employees and beneficiaries in employer-provided benefit plans. 29 U.S.C. § 1001(a). The safeguards contained in ERISA amount to formal obligations for the establishment, operation and administration of such plans. *Id.* Through ERISA's preemption clause, Congress sought a careful balance of the burdens created by the statute:

> Section 514(a) [ERISA's preemption clause] was intended to ensure that plans and plan sponsors would be subject to a uniform body of benefits

> law; the goal was to minimize the administrative and financial burden of complying with conflicting directives among States or between States and the Federal Government. Otherwise, the inefficiencies created could work to the detriment of plan beneficiaries.

Ingersoll-Rand Co. v. McClendon, 498 U.S. 133, 142 (1990).

Congress wished to avoid

> [a] patch-work scheme of regulation [that] would introduce considerable inefficiencies in benefit program operation, which might lead those employers with existing plans to reduce benefits, and those without such plans to refrain from adopting them.

Fort Halifax Packing Co. v. Coyne, 482 U.S. 1, 11 (1987).

As the Court has thus recognized, a fundamental purpose of ERISA was to create a uniform national law for the efficient administration of employer-sponsored benefit plans. A uniform national law currently exists under ERISA for designating the beneficiary who is entitled to a participant's death benefit. In stark contrast, the patchwork of State regulation contemplated by the Washington Supreme Court's decision below would create precisely the type of administrative inefficiencies that would frustrate ERISA's uniform national law purpose.

A. Under ERISA, the Terms of a Pension or Welfare Plan Govern Beneficiary Status.

An ERISA pension plan, or an ERISA welfare plan that provides a death benefit, must set forth the beneficiary designation provisions that direct the

payment of a death benefit. This payment scheme is essential to the operation of such plans, given the necessity of paying the death benefit to a beneficiary and given ERISA's definition of a "beneficiary" as "a person designated by a participant, or *by the terms of an employee benefit plan*, who is or may become entitled to a benefit thereunder." 29 U.S.C. § 1002(8) (emphasis added). Notably, the ERISA statute is devoid of any reference to a designation of beneficiaries pursuant to State law. Again without referring to State law, ERISA § 502 provides the enforcement mechanism for benefits available to a beneficiary under the terms of a plan. *See* 29 U.S.C. § 1132(a)(1) (a beneficiary may bring a civil action to recover benefits due under the terms of a plan). To ensure compliance with the beneficiary designation provisions and other provisions of a plan, ERISA imposes on plan fiduciaries the obligation to discharge their duties in accordance with the governing plan documents. 29 U.S.C. § 1104(a)(1)(D).

Thus, the proper beneficiary under an ERISA plan can be identified by the simple process of reading the governing plan documents. *See Metropolitan Life Ins. Co. v. Marsh*, 119 F.3d 415, 421 (6th Cir. 1997) (deciding the beneficiary of ERISA plan benefits is "directly within the scope of the plan's authority"). For example, the Boeing pension plan allows participants to designate a beneficiary on an appropriate form. Joint Appendix at 39. If a beneficiary is not properly designated or predeceases the participant, the Boeing pension plan states that benefits are paid to one of the following beneficiaries: the surviving spouse; if no surviving spouse, the children in equal shares; and if no surviving children, either to

another relative designated by the Boeing pension plan administrator or to the participant's estate. *Id.* Thus, at the time of a participant's death, the appropriate Boeing pension plan administrator needs to undertake only the following two simple steps:

> (1) determine whether the participant has a valid beneficiary designation form on file and
>
> (2) if there is proper designation, direct payment to the designated beneficiary; if there is no proper designation or if the designated beneficiary has predeceased the participant, direct payment in accordance with the plan's beneficiary priority.

B. A Patchwork of State Regulation Would Impose Unnecessary Administrative Burdens on ERISA Plans.

ERISA's legislative history reveals a special concern for ensuring that a uniform national law would govern a plan's cognizance over designating and paying beneficiaries:

> Statements by ERISA's sponsors in the House and Senate clearly disclose the problem that the pre-emption provision was intended to address. . . .
>
> These statements reflect recognition of the administrative realities of employee benefit plans. An employer that makes a commitment systematically to pay certain benefits undertakes a host of obligations, such as *determining the eligibility of claimants*, calculating benefit levels, making disbursements,

monitoring the availability of funds for benefit payments, and keeping appropriate records in order to comply with applicable reporting requirements. *The most efficient way to meet these responsibilities is to establish a uniform administrative scheme, which provides a set of standard procedures to guide processing of claims and disbursement of benefits.* Such a system is difficult to achieve, however, if a benefit plan is subject to differing regulatory requirements in different States. A plan would be required to keep certain records in some States but not in others; to make certain benefits available in some States but not in others; to process claims in a certain way in some States but not in others; and to comply with certain fiduciary standards in some States but not in others.

Fort Halifax, 482 U.S. at 9 (emphasis added). State-by-State regulation of the beneficiary designation process is significantly more burdensome than ERISA's simple process of paying the beneficiary indicated by the governing plan documents. A patchwork of State regulation would require plan administrators to undertake many additional actions, as described below.

First, a State-regulated plan administrator would need to understand the applicable beneficiary law in all states in which the plan sponsor maintains operations or pays benefits (e.g., Boeing has operations located in 45 states and has paid benefits to participants who reside in all 50 states).[3] This monitoring would have to be repeated

[3] The mere fact that employees can retire to States other than the State in which they worked for an employer imposes a potentially significant burden on plan administration, even for an employer with operations in a single State. Absent ERISA preemption, it is unclear, at best, whether the law of a foreign State with no connection to an ERISA plan other than the residence of a retired plan participant may govern that participant's beneficiary designation.

on a periodic or distribution-by-distribution basis.[4] Adding to the administrative burden would be the fact that the source of law in each State is not plain, potentially arising under common law or codified in probate, trust and estate, domestic relations, or community property statutes. A sampling of the beneficiary designation laws of just four States in which Boeing has operations – Arizona, Montana, Oklahoma and Virginia – demonstrates the potential diversity of sources and substance. ARIZ. REV. STAT. ANN. § 14-2804 (trusts and estates); MONT. CODE ANN. § 72-2-814 (probate); 15 OKLA. STAT. § 178 (contracts); VA. CODE ANN.

[4] The historical underpinning of Revised Code of Washington § 11.07.010 demonstrates the need to monitor existing law. The Washington Legislature enacted § 11.07.010 effective January 1, 1995. WASH. REV. CODE § 11.07.010(6). Immediately prior, Washington law was quite different. In *Aetna Life Ins. Co. v. Wadsworth*, 102 Wn.2d 652, 689 P.2d 46 (1984), the Washington Supreme Court created a judicial rule whereby a dissolution decree that clearly indicated an intent to divest a former spouse as a life insurance beneficiary would be operative as long as the participant acted to remove the former spouse as the designated beneficiary within a reasonable time (generally, one year); if the former spouse was not timely removed, then the court would conclusively presume the former spouse to be the named beneficiary. 102 Wn.2d at 662. Before 1984, the same issue in Washington was resolved under yet other standards. *Id.* at 660-62.

§ 20-111.1 (domestic relations).[5] If forced to deal with the diversity of State laws, plan administrators would face

---

[5] Arizona Revised Statute § 14-2804(A) provides, in relevant part:

> Except as provided by the express terms of a governing instrument, a court order or a contract relating to the division of the marital estate made between a divorced couple before or after the marriage, divorce or annulment, the divorce or annulment of a marriage:
>
> 1. Revokes any revocable:
>
> (a) Disposition or appointment of property made by a divorced person to that person's former spouse in a governing instrument. . . .

A payor who relies in "good faith" on the validity of a beneficiary designation is not liable for making payment before the payor receives "written notice" of the divorce, annulment or remarriage. ARIZ. REV. STAT. ANN. § 14-2804(F). Written notice must be mailed to the payor's main office or home by certified mail, return receipt requested, or served on a payor in the same manner as a summons in a civil action. *Id.* § 14-2804(G).

Montana Code § 72-2-814 is substantially similar to Arizona Revised Statute § 14-2804. Even so, Montana law imposes supplemental requirements. For example, Montana law states that a payor is only liable for actions taken two or more business days after actual receipt of a written notice of the divorce, annulment or remarriage. MONT. CODE ANN. § 72-2-814(7)(a). Moreover, Montana law requires that the written notice contain a number of specific elements in order to be effective. MONT. CODE ANN. § 72-2-814(7)(b).

Oklahoma Statute, Title 15, § 178 provides, in relevant part:

> A. If, after entering into a written contract in which a beneficiary is designated or provision is made for the payment of any death benefit (including life insurance contracts, annuities [and] retirement arrangements . . .), the party to the contract with the power to designate the beneficiary or to make

burdens of paying for costly legal research, retaining

> provision for payment of any death benefit dies after being divorced from the person designated as the beneficiary or named to receive such death benefit, all provisions in the contract in favor of the decedent's former spouse are thereby revoked. Annulment of the marriage shall have the same effect as a divorce. In the event of either divorce or annulment, the decedent's former spouse shall be treated for all purposes under the contract as having predeceased the decedent.
>
> B. Subsection A of this section shall not apply:
>
> 1. If the decree of divorce or annulment is vacated;
>
> 2. If the decedent had remarried the former spouse and was married to said spouse at the time of the decedent's death;
>
> 3. If the decree of divorce or annulment contains a provision expressing an intention contrary to subsection A of this section;
>
> 4. If the decedent makes the contract subsequent to the divorce or annulment;
>
> 5. To the extent, if any, the contract contains a provision expressing an intention contrary to subsection A of this section; or
>
> 6. If the decedent renames the former spouse as the beneficiary or as the person or persons to whom payment of a death benefit is to be made in a writing delivered to the payor of the benefit prior to the death of the decedent and subsequent to the divorce or annulment.

Code of Virginia § 20-111.1 provides, in relevant part:

> Upon the entry of a decree of annulment or divorce from the bond of matrimony on and after July 1, 1993, any revocable beneficiary designation

local counsel in each State or pursuing other means of determining applicable State law.

If ERISA's simple scheme for determining plan beneficiaries was abandoned and replaced with a multitude of varied State regulatory schemes, the range of uncertainties faced by plan administrators would be significantly increased. Each State scheme would inevitably present its own unique set of uncertainties.

In fact, the Washington statute at issue in this appeal, Revised Code of Washington § 11.07.010, is itself not subject to simple interpretation. It contains several detailed subsections that create ambiguous standards for plan administrators. By way of example, one subsection in § 11.07.010 states that the payor will not be responsible for paying an employee benefit plan asset to a former spouse if the payor did not have "actual knowledge" of

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contained in a then existing written contract owned by one party that provides for the payment of any death benefit to the other party is revoked. A death benefit prevented from passing to a former spouse by this section shall be paid as if the former spouse had predeceased the decedent. The payor of any death benefit shall be discharged from all liability upon payment in accordance with the terms of the contract providing for the death benefit, unless the payor receives written notice of a revocation under this section prior to payment.

. . . .

This section shall not apply (i) to the extent a decree of annulment or divorce from the bond of matrimony, or a written agreement of the parties provides for a contrary result as to specific death benefits, or (ii) to any trust or any death benefit payable to or under any trust.

the marriage's invalidation at the time of payment. WASH. REV. CODE § 11.07.010(3)(a). The seemingly well-intended provision does not effectively assist many plan administrators with their payment decision-making. In particular, it is unclear whether the Boeing pension plan administrator would be deemed to have actual knowledge of a divorce for purposes of paying a death benefit if the participant had earlier removed her former spouse as a dependent under one of the dozens of Boeing medical plans. If so, and if the Boeing pension plan paid the benefits, the Boeing pension plan could be exposed to double payment liability under § 11.07.010(3)(a). The increased uncertainty and liability – arising from just one aspect of the law of just one State – indicate the magnitude of the potential burden for plan administrators if they are required to apply the diverse laws of up to 50 states.

After making the State law determinations, a State-regulated plan administrator would need to tailor the plan's beneficiary designation procedures and forms in accordance with varied State regulatory schemes. For example, procedures would need to be developed for ensuring that the plan pays the appropriate beneficiary under the various State laws. And administrative forms would need to address the effect of State law on who ultimately receives a death benefit, so that participants can make informed decisions about beneficiaries (and beneficiary changes) and so that beneficiaries and other claimants can understand the effect of past designations or revocations by participants.

Perhaps the most difficult task of all for State-regulated plan administrators would be that of sorting through a wide range of choice of law questions.

Although an endless array of hypothetical situations could be developed, the actual facts in the case of *Hill v. AT&T Corp.*, 125 F.3d 646 (8th Cir. 1997), reflect the potential choice of law complications. The pertinent facts were as follows:

(1) John and Judy Hill married in the State of Missouri in 1970;

(2) while married and residing in Missouri, Judy was employed by AT&T;

(3) thereafter, the couple moved to the State of Washington where Judy continued her employment with AT&T;

(4) in 1979, Judy affirmatively designated John as her primary beneficiary under the AT&T savings plan;

(5) in July 1986, the couple separated and John returned to Missouri;

(6) Judy filed for divorce, and a Washington court granted a default divorce decree in November 1986;

(7) Judy never modified her designation of John as her primary beneficiary under the AT&T savings plan;

(8) following the divorce, Judy moved to the State of Rhode Island, where she died in 1991 while still employed by AT&T;

(9) John and the contingent beneficiary listed on the plan's beneficiary designation form both claimed entitlement to Judy's plan benefits;

(10) despite receiving notice of these competing claims, the plan paid benefits to the contingent beneficiary; and

(11) John then filed a lawsuit in Missouri.

Id. at 647-48. Under these facts, if State law were to govern ERISA plan beneficiary designations, arguments could be made for applying the law of Missouri, Washington or Rhode Island.[6] If a plan administrator were to pay benefits after an erroneous choice of law determination, the benefit plan would be at risk of double payment liability.[7]

---

[6] John, the prevailing party, in fact argued that the beneficiary designation was governed by the application of Washington law as it existed prior to the enactment of Revised Code of Washington § 11.07.010 (*see supra* note 4). 125 F.3d at 648 n.4. The Eighth Circuit, however, declined to apply State law. The court instead held that the controlling law was the federal common law of ERISA, as developed in the Eighth Circuit, and that the divorce decree was not sufficiently specific to divest John of his beneficiary status. *Id.* at 648.

[7] *Hill v. AT&T Corp.* provides an example of this risk of double payment liability. There, the AT&T savings plan administrator was determined by the Eighth Circuit to have misapplied the law and was required to pay the benefits a second time. *Id.* at 650. Moreover, the facts presented to the Court by this petition also demonstrate this double payment liability risk. The insurer of the Boeing life insurance plans (Aetna) has already paid the policy benefits to Petitioner (the participant's former spouse, who is designated on the beneficiary form). The Respondents (the participant's children by a prior marriage) have since filed suit against Aetna seeking payment of those same benefits under Revised Code of Washington § 11.07.010.

The inevitable administrative burdens that would result from a patchwork of State regulation would frustrate ERISA's purpose of creating a uniform national law for the efficient administration of employer-sponsored benefit plans. To avoid this result, the Court should decide that ERISA preempts Revised Code of Washington § 11.07.010 and similar State laws. *See Manning v. Hayes*, 212 F.3d 866, 870 (5th Cir. 2000) (citing decisions from the Federal circuits to support the conclusion that a State law governing the designation of an ERISA beneficiary is preempted by ERISA).

II. PLAN ADMINISTRATORS SHOULD BE ABLE TO RELY SOLELY ON THE GOVERNING PLAN DOCUMENTS IN DETERMINING ERISA PLAN BENEFICIARIES.

Plan sponsors and administrators around the country would benefit by avoiding a multiplicity of regulation over identifying the proper beneficiary under ERISA plans, especially in situations where a former spouse is designated as a beneficiary at the time of death but arguably waived some or all rights to the death benefits at the time of divorce. The Court would save countless costs and time expenditure by confirming the uniform national law for all ERISA plans.

Boeing, the NAM and the Chamber respectfully suggest that ERISA's existing simple scheme – determining beneficiaries solely by the provisions of the governing plan documents – offers the most administratively efficient standard for a uniform national

law.[8] As stated above, ERISA already contemplates that the terms of an ERISA plan document will designate, or create a means for designating, the plan's beneficiary. *See* 29 U.S.C. § 1002(8). Further administrative scrutiny of beneficiary designations is unnecessary. Such scrutiny would serve only to complicate and confuse the beneficiary designation process. *See, e.g., Manning*, 212 F.3d at 874 (an ERISA beneficiary may waive his or her entitlement to the proceeds of an ERISA plan, provided that the waiver is "explicit, voluntary, and made in good faith") (citation and internal quotation marks omitted); *Hill v. AT&T Corp.*, 125 F.3d at 650 (a divorce decree must be sufficiently specific to convey the intent of the parties to divest one or the other, or both, of an ERISA beneficiary interest); *Fox Valley & Vicinity Constr. Workers Pension Fund v. Brown*, 897 F.2d 275 (7th Cir. 1990) (same proposition); *Lyman Lumber Co. v. Hill*, 877 F.2d 692 (8th Cir. 1989) (same proposition). The objectives of ERISA will be properly served by the Court's confirmation that an ERISA plan beneficiary is determined solely by the governing plan documents – a particularly clear and concise statement of the law and a standard that will result in the efficient administrative process contemplated by Congress.

Finally, ERISA's beneficiary designation scheme of looking to the governing plan documents is not only the

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[8] Although some lower courts have developed and applied a Federal common law under ERISA to determine similar beneficiary designation issues, *see, e.g., Manning*, 212 F.3d at 874, Boeing, the NAM and the Chamber nonetheless believe that resort to Federal common law is inappropriate when the ERISA statute already establishes a beneficiary designation scheme.

best result for plan sponsors and administrators, but also it favors the interests of plan participants. The simplicity of the ERISA scheme allows participants, as well as their legal and financial advisors, to determine from the governing plan documents whether a beneficiary designation in favor of a former spouse will remain valid until the participant changes it, regardless of divorce or other life events. This scheme is easy to communicate and easy to understand. In addition, the efficiencies of a uniform national law that is simple in design and in operation will mitigate the potential for employers to decrease pension and welfare benefits in order to pay for increased administration and litigation costs arising from beneficiary disputes. *See Fort Halifax*, 482 U.S. at 11.

CONCLUSION

The judgment below should be reversed and the Court should hold that ERISA sets forth the uniform national law which ERISA plan administrators must apply to beneficiary designations.

Respectfully submitted,

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In The

Supreme Court of the United States

DONNA RAE EGELHOFF,

Petitioner,

v.

SAMANTHA EGELHOFF, a Minor, by and through Her Natural Parent Kate Breiner, and DAVID EGELHOFF,

Respondents.

On Writ Of Certiorari To The Supreme Court Of Washington

BRIEF OF THE WESTERN CONFERENCE OF TEAMSTERS PENSION TRUST FUND AS AMICUS CURIAE IN SUPPORT OF PETITIONER

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I. STATEMENT OF INTEREST OF THE WESTERN CONFERENCE OF TEAMSTERS PENSION TRUST FUND

The Western Conference of Teamsters Pension Trust Fund (the "WCT Fund")[1] submits this brief to urge the Court to reverse the decision of the Washington Supreme Court in the matter of *Egelhoff v. Egelhoff*.[2]

The WCT Fund is a jointly administered trust maintained pursuant to Section 302(c) of the Labor Management Relations Act, 20 U.S.C. § 186(c). The WCT Fund administers the Western Conference of Teamsters Pension Plan (the "WCT Plan"), an employee pension benefit plan under Section 3(2) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. § 1002(2), and a "multiemployer plan" as defined in Section 3(37) of ERISA, 29 U.S.C. § 1002(37).

The WCT Plan has participating employers located in thirteen western states[3] and, as of the end of last year, over 239,650 active plan participants. In addition, the WCT Plan has nearly 300,000 inactive participants and beneficiaries spread amongst all fifty states, the District

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[1] To avoid duplication of argument, counsel for the WCT Fund exchanged drafts of briefs with Petitioner and some amici in the course of preparing this brief. While having considered the comments of those sources, counsel for the WCT Fund were the sole authors of this brief and no person or entity other than the WCT Fund made a monetary contribution to the brief's preparation or submission. As of July 10, 2000, counsel for all parties gave their blanket consent to the filing of amicus briefs in this matter.

[2] 989 P.2d 80 (1999).

[3] Those thirteen states are Alaska, Arizona, California, Colorado, Idaho, Hawaii, Montana, New Mexico, Nevada, Oregon, Utah, Washington, and Wyoming.

of Columbia, several U.S. territories, and foreign countries.

The WCT Fund has paid over 23,000 death benefit claims in the last three years.[4] The terms of the WCT Plan provide that the WCT Fund will pay these claims in accordance with a beneficiary designation card on file, a designation contained in an application for retirement benefits, or, if neither exists, pursuant to the beneficiary preference provisions of the WCT Plan. Thus, the WCT Plan administrators have a clear method for paying death benefits and complying with ERISA's mandate that a plan be administered according to the terms of its governing documents and instruments.

Given the WCT Plan's nationwide provision of benefits, the WCT Fund has a great stake in the outcome of *Egelhoff v. Egelhoff*. In particular, *Egelhoff* held that the Washington Legislature could nullify an ERISA-governed plan participant's beneficiary designation, despite a conflict between the terms of the Washington law and an employee benefit plan. If allowed to stand, *Egelhoff* will impede the ability of the WCT Fund to administer the WCT Plan.

II. SUMMARY OF THE ARGUMENT

It is widely recognized that one of Congress' central aims in enacting ERISA was to provide a uniform body of federal law to regulate employee benefit plans. A confusing patchwork of conflicting statutory and common law directives relating to the treatment, after divorce, of a spousal beneficiary designation made by a plan participant during marriage threatens that goal. The state statute pivotal to this case, Washington's Revised Code

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[4] Since the inception of the Plan, there have been 151,702 claims for payment of death benefits.

Section 11.07.010, is but one example. It generally provides that a spousal beneficiary designation becomes ineffective upon divorce, and directs ERISA plan administrators to treat the former spouse as if he or she had predeceased the participant.

Section 11.07.010 and similar statutes are apparently based on the assumption that plan participants will not remember to modify their beneficiary designations after divorce, and that it is appropriate for state legislatures to do it for them. The WCT Fund questions both premises. The WCT Fund believes that the concerns that form the basis for statutes like Washington Revised Code Section 11.07.010 can be adequately addressed by simply urging participants to change their beneficiary designations upon divorce.

California, for example, has enacted a statute that requires courts, upon the issuance of a divorce decree, to remind plan participants to change their beneficiary designations following divorce if they so desire. This law does not require any modification of existing employee benefit plan administration practices. In addition, it permits participants to control the fate of their benefits, and does not nullify beneficiary designations that the participants may have, in fact, intended. The WCT Fund submits that the California approach embodies an uncomplicated solution to the concern at which the Washington statute is aimed.

In any event, laws purporting to invalidate beneficiary designations violate ERISA's substantive provisions.[5] Among other things, ERISA commands the fiduciaries of

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[5] Such state laws also impermissibly relate to, and seek to govern the administration of, employee benefit plans, thereby falling within ERISA's preemptive sweep. *See* ERISA § 514, 29 U.S.C. § 1144. The WCT Fund does not brief the preemption issues here, presuming that the parties' briefs will address this topic at length.

an employee benefit plan to administer the plan in accordance with the terms of the documents and instruments governing it. ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D). Statutes directing a fiduciary to provide benefits to someone other than a designated beneficiary fly in the face of this requirement by requiring the fiduciary to overlook both the beneficiary designation and the distribution procedures set forth in the plan.

Furthermore, requiring plan fiduciaries to distribute a participant's interest according to rules established by varying jurisdictions would increase the complexity of plan administration, thereby making day-to-day administration more costly. Particularly in the case of multi-state plans like the WCT Plan, regulating the distribution of benefits in a manner that varies depending on which jurisdiction governs that distribution would preclude efficient administration of employee benefit plans. Jurisdictions' different legal requirements would require the management of a single plan according to inconsistent rules. Substantive regional variances would present continual choice of law dilemmas every time claimants of different jurisdictions compete for the same benefits. These issues would require an increased role from plan counsel, adding to the costs of plan administration and clogging courts with ever more frequent interpleader actions. There are only two methods of paying these additional costs: either employers absorb them as the price of electing to provide benefit plans, or, participants bear them in the form of reduced benefits and plan reserves.

Given ERISA's mandate to administer plans in accordance with their governing documents and instruments, "federal common law" need not, and should not, be fashioned to address the impact of divorce on beneficiary designations, particularly since efforts to create federal

common law have differed from state to state resulting in anything but a uniform federal law.

III. ARGUMENT

A. The Court Should Uphold Congress' Mandate to Administer Benefit Plans Pursuant to a Uniform Body of Federal Law

1. A Review of the Status of the Law Among the Fifty States Reveals That Washington's Revised Code Section 11.07.010 Only Adds to Conflict

While Respondents downplay the prevalence of conflicting laws concerning the validity of an ERISA plan participant's beneficiary designation,[6] a survey of the status of the law within the fifty states reveals that the law on the books differs greatly from state to state. Including Washington, at least seventeen states have enacted statutes relating to the impact of divorce on beneficiary designations made during marriage. Numerous state and federal courts in those jurisdictions and others have grappled with the issue, often leading to yet further directives. In the end, fiduciaries of multi-state plans currently face up to a dozen different approaches to the situation, a number that is likely to increase if state regulation of beneficiary designations is approved by this Court.

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[6] *See* Respondents' Brief in Opposition to Petition for Writ of Certiorari at pages 5 and 6.

a. Eight states have enacted their own statutes directing how plan fiduciaries should treat spousal beneficiary designations

A number of states have enacted statutes regarding the treatment of spousal beneficiary designations upon divorce. The statute central to this case, Washington's Revised Code Section 11.07.010, purports to require plan fiduciaries to treat the designated beneficiary as if he or she had predeceased the former spouse, subject to certain exceptions.[7] Ohio, Oklahoma, Pennsylvania, Utah, and Virginia have enacted similar laws. *See* OHIO REV. CODE § 1339.63 (2000); OKLA. STAT. tit. 15, § 178 (1999); 20 PA. CONS. STAT. § 6111.2 (1999); UTAH CODE § 30-3-7.5 (1999); VA. CODE §§ 20-111.1 and 38.2-305 (2000).

Texas and Missouri each take a different approach. Texas has two statutes, both of which require plan fiduciaries to treat the beneficiary designation of a spouse as ineffective, and to instead pay the proceeds to either the contingent beneficiary or, if no such beneficiary exists, the participant's estate. TEX. FAMILY CODE §§ 9.301 and 9.302 (2000). In so doing, Texas' legislature has not only invalidated the participant's beneficiary designation, but has also overridden benefit plans' preference schemes, delineating the distribution of benefits where the participant leaves no validly designated beneficiary.

Unlike Texas, Missouri revokes beneficiary designations upon divorce, but does not name the alternate recipient, instead requiring only that the former spouse be

[7] The main exception permits divorce decrees to explicitly provide for a spousal beneficiary designation, in which case the designation remains valid. This exception, and others like it in similar statutes, would require plan administrators to analyze the precise language of divorce judgments to ensure compliance with the statute's stated exceptions.

treated as if he or she disclaimed the designation. MO. REV. STAT. § 461.051 (1999).

The seemingly small difference between Texas' and Missouri's statutes may mandate diverse results in a single factual scenario. Under the WCT Plan, if no validly designated beneficiary survives the participant, benefits must be paid according to the WCT Plan's preference scheme – a system in which the estate of the participant ranks last in order of preference.[8] However, observing Texas' statute would result in the participant's estate being the first resort where there exists no contingent beneficiary designation. Thus, whether a statute defers to a plan's preference system (like Missouri's) or identifies the alternate disposition of the assets (like Texas') can alter the recipient of the benefits. As a result, such provisions may mandate distributions contrary to the intent and expectations of the plan sponsors and participants. In any event, the divergent state laws will complicate plan administration.

b. Ten states have adopted Uniform Probate Code Section 2-804, but are divided on the application of several substantive provisions

While the Uniform Probate Code (the "UPC") was designed years ago in an effort to create uniformity among the states on the treatment of certain assets upon death, only a fraction of the states have enacted it. With only one-fifth of the states having adopted some form of

[8] The WCT Plan's preference system provides that, in the event a vested participant dies with no valid beneficiary designation on file, the participant's beneficiary will be the survivor(s) in the first class among the following: 1) surviving spouse; 2) children; 3) parents; 4) siblings; and 5) estate.

UPC Section 2-804, to denominate it as a "uniform" act is a misnomer. Moreover, where adopted, state legislatures have almost invariably modified the model provisions.

The portion of the UPC that relates to the issue before the Court is found in Article 2 at Section 804. It provides that, unless stated otherwise in the parties' dissolution judgment or the "governing instrument" itself, divorce will cause the former spouse to be treated as if he or she has disclaimed the beneficiary designation. UNIF. PROBATE CODE § 2-804 (1998). Only nine states have enacted this section of the UPC or some form of it, though Wisconsin has enacted a virtually identical statute, while not referencing the UPC.

While the model statute appears straightforward, the ten states that have adopted it have done so in no fewer than four different ways. In short, the states adopting Section 2-804 have ensured that the provisions of the UPC are, in reality, anything but uniform.

The core difference between the various enactments centers on a subparagraph of the UPC, Section 2-804(h)(2). Section 2-804(h)(2) directs that, in the event that a federal law is found to preempt the UPC rules for the disposition of specified assets (including employee benefit plan benefits), the party entitled to receive an asset under the federal law must pay its value "to the person who would have been entitled to it were this section or part of this section not preempted." UNIF. PROBATE CODE § 2-804(h)(2).

Michigan, South Dakota, Colorado, and New Mexico have adopted the subparagraph of Section 2-804 on preemption as set forth in the UPC, while Alaska, Arizona, and Wisconsin have all adopted the bulk of Section 2-804 without including the preemption paragraph. North Dakota and Montana, in contrast, adopted a modified version of Section 2-804(h)(2), specifically excepting

ERISA from its ambit. Finally, Utah stands on its own; it enacted both Section 2-804 (including Section 2-804(h)(2)), as well as a separate statute directing plan fiduciaries to treat a designated former spouse as predeceasing the plan participant.

c. State and federal courts impose yet other rules

In addition to these myriad statutory requirements imposing diverse obligations on plan fiduciaries, a number of courts have enunciated different requirements, sometimes conflicting even with statutory provisions enacted in the geographic region in which the court sits.[9]

Generally speaking, state courts considering this issue base their decisions on contract and insurance principles, usually finding that divorce alone does not revoke

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[9] For instance, in *Metropolitan Life Ins. Co. v. Hanslip*, 939 F.2d 904 (10th Cir. 1991), the Tenth Circuit held that ERISA preempts an Oklahoma statute similar to Washington Revised Code Section 11.07.010. However, the fact that the Oklahoma statute, Title 15, Section 178, remains on the books creates a distinct possibility that an Oklahoma state court may find the statute is not preempted or choose to fashion "federal common law." Thus, a plan administrator in Oklahoma faces potential liability for following either approach. Administrators in some other jurisdictions are similarly beset. *Compare Guardian Life Ins. Co. of America v. Madole*, 58 F. Supp. 2d 26 (D.D.C. 1999) (ERISA preempts the District's law purporting to regulate the designation of a life insurance policy), *with Critchell v. Critchell*, 746 A.2d 282 (D.C. 2000) (ERISA does not preempt the District's marital property law relating to a spouse's waiver of interest in pension plan). *Compare also* Pennsylvania's statute, Title 20, Section 6111.2 (divorce revokes beneficiary designations made during marriage in favor of spouse), *with* the common law decision *Metropolitan Life Ins. Co. v. Walsh*, 892 F. Supp. 671 (W.D. Pa. 1995) (ERISA preempts state law purporting to regulate beneficiary designation).

a spousal beneficiary designation "absent convincing evidence that [a property settlement] was intended to deprive the named beneficiary of that interest." *Estate of Bowden v. Aldridge*, 595 A.2d 396, 396 (D.C. 1991); *see also Frederick v. Frederick*, 687 A.2d 711 (N.H. 1996); *Duncan v. Investors Diversified Services, Inc.*, 330 S.E.2d 295, 296 (S.C. 1985). An exception is New Jersey, where courts have held that a marital settlement agreement with a mutual release of all claims creates a presumption that the parties waived their rights under pre-existing designations. *See In re Estate of Lanken*, 676 A.2d 190 (N.J. Super. Ct. Ch. Div. 1996).

While some federal courts agree with the state common law approach, others do not. The Sixth Circuit, for instance, has held that ERISA Section 404(a)(1)(D) – which requires fiduciaries to manage plans in accordance with its governing documents and instruments – itself supplies the rule of law and mandates that fiduciaries pay the benefits to the beneficiary designated by the participant. *See Metropolitan Life Ins. Co. v. Pressley*, 82 F.3d 126, 130 (6th Cir. 1996); *McMillan v. Parrott*, 913 F.2d 310, 311 (6th Cir. 1990). The Tenth Circuit is in accord, holding in *Metropolitan Life Ins. Co. v. Hanslip*, 939 F.2d 904 (10th Cir. 1991), that ERISA preempts an Oklahoma statute purporting to require plan fiduciaries to treat a designated former spouse as predeceasing the participant, and instead requires payment of the benefits to the designated beneficiary. *See also Metropolitan Life Ins. Co. v. Walsh*, 892 F. Supp. 671 (W.D. Pa. 1995). *But see Metropolitan Life Ins. Co. v. Pearson*, 848 F. Supp. 1326 (E.D. Mich. 1994) (holding that ERISA does not preempt Michigan family law and applying the Michigan revocation-by-divorce statute).

Yet another approach adopted by some courts is to first find that ERISA preempts state law, but to then look

to state statutes to fashion federal common law rather than finding the answer in ERISA itself. *See Brandon v. Travelers Insurance Co.*, 18 F.3d 1321, 1326 (5th Cir. 1994), (where the federal court looked to a Texas statute to fashion federal common law, but declined to adopt the state statute on a "wholesale" basis, instead modifying "the adoption of state law to require that any waiver be voluntary and in good faith") and *Manning v. Hayes*, 212 F.3d 866 (5th Cir. 2000) (same). *But see Emmens v. Johnson*, 923 S.W.2d 705, 712 (Tex. App. 1996) (refusing to follow the *Brandon* "federal common law" and instead adopting Texas statutory law and calling it "federal common law").[10]

As discussed below, these many conflicting directives have created the precise situation that Congress, in enacting ERISA, sought to prevent: the development of different substantive standards applicable to the same conduct. As this Court held in *Ingersoll-Rand Co. v. McClendon*, "[s]uch an outcome is fundamentally at odds with the goal of uniformity that Congress sought to implement."[11] 498 U.S. 133, 142 (1990).

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[10] Thus, while both state and federal courts in Texas purport to apply "federal common law," the test used is different, such that who will receive benefits might well turn on whether a case is filed in a state or federal court.

[11] While *Ingersoll-Rand* focused on potential differences in requirements governing employer conduct, the issue here is even more central to ERISA – a plan administrator's ability to ensure the provision of benefits to participants and beneficiaries in accordance with the instruments controlling the plan. *See, e.g., Boggs v. Boggs*, 520 U.S. 833, 845 (1997) (ERISA's "principal object . . . is to protect plan participants and beneficiaries"); *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 90 (1983) ("ERISA is a comprehensive statute designed to promote the interests of employees and their beneficiaries in employee benefit plans") (citations omitted).

d. California reminds divorcing parties that they may modify their beneficiary designations

Instead of adding to the conflicting directives, California has chosen to take aim at the source of the issue – the plan participant. California's mandatory form Judgment of Dissolution instructs parties to review any beneficiary designations to determine if changes should be made. CAL. FAM. CODE § 2024(b) (2000). Thus, instead of enacting a statute regulating the treatment of existing spousal beneficiary designations after divorce, California attempts to overcome any possibility of distributing benefits to an unintended beneficiary by apprising participants that they may modify designations if they wish.

The WCT Fund believes that the California method of addressing the concern of a potentially unwanted disposition of plan assets is the best approach. Such a technique neither infringes on ERISA's uniform regulation of employee benefit plans nor imposes any additional burden on plan administrators. This approach also ensures that plan participants who wish to modify designations are reminded to do so, but does not invalidate what may be a considered choice by a participant to retain a former designation.

2. As This Court Has Recognized Many Times over, Congress Enacted ERISA to Permit Plan Administration Under a Uniform Body of Federal Law

This Court has repeatedly confirmed that Congress enacted ERISA to ensure that plan sponsors and administrators could administer employee benefit plans in accordance with a uniform body of governing law. *See, e.g., Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 142 (1990) ("Section 514(a) was intended to ensure that plans and

plan sponsors would be subject to a uniform body of benefits law"); *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 105 (1983) ("[b]y establishing benefit plan regulation 'as exclusively a federal concern,' Congress minimized the need for interstate employers to administer their plans differently in each State in which they have employees") (citations omitted); *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 11 (1987) ("Congress intended preemption to afford employers the advantages of a uniform set of administrative procedures governed by a single set of regulations"); *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 523 (1981) (ERISA's preemption clause was designed to "establish pension plan regulation as exclusively a federal concern"). Congress' aim was geared towards minimizing "the administrative and financial burden of complying with conflicting directives among States or between States and the Federal Government . . . , [and preventing] the potential for conflict in substantive law . . . requiring the tailoring of plans and employer conduct to the peculiarities of the law of each jurisdiction." *Ingersoll-Rand Co. v. McClendon*, 498 U.S. at 142.

Legislative history underscores the importance of the federalization of benefit regulation to the sponsors of ERISA. In introducing the bill to Congress, sponsors described the "crowning achievement" of the Act as its assurance of consistent administration of employee benefit plans across the country. 120 CONG. REC. 29197 (1974). As Representative Dent of the House of Representatives put it, preemption "round[s] out the protection afforded participants by eliminating the threat of conflicting and inconsistent state and local regulation." *Id.*; *see also id.* at 29933 ("the substantive and enforcement provisions

. . . are intended to preempt the field for federal regulations, thus eliminating the threat of conflicting or inconsistent state and local regulation of employee benefit plans").

Against this backdrop, this Court has concluded that "the basic thrust of the pre-emption clause, then, was to avoid a multiplicity of regulation in order to permit the nationally uniform administration of employee benefit plans." *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 657 (1995). To achieve this end, ERISA requires the preemption of all "state laws that mandate[ ] employee benefit structures or their administration." *Id.* at 658.

In this case, upholding the Washington legislature's regulation of the validity of beneficiary designations would undermine ERISA's aim to create a single, uniform body of law governing the administration of employee benefit plans. The effect would be to subject plan sponsors to laws varying from locale to locale. Observing the various laws would, in turn, require plan fiduciaries to engage in complex, time-consuming efforts to determine the distribution mandated by the law at issue.[12] Even setting aside cost considerations, such a scheme proves essentially unworkable for multi-state plans. As discussed below, a patchwork of laws purporting to govern

[12] Although the WCT Fund reviewed the laws of the fifty states in connection with this brief, that undertaking proved to be both difficult and expensive. While the WCT Fund had the resources to enable it to do so, many of the problems identified in this brief are not limited to large trusts. Small trusts, whose plans are often administered by outside consultants and secretaries, do not have the tools to locate, interpret and apply the laws of every state to which participants or beneficiaries may relocate.

beneficiary designations would subject fiduciaries to conflicting obligations – sometimes even with regard to the same benefit payment – exposing the plan to potential liability regardless of the course chosen by its administrator.

B. Plan Administrators Have a Compelling Need for Uniform Administration of Benefit Claims in Accordance with Beneficiary Designations and Plan Provisions

The current hodgepodge of legal requirements varying from state to state threatens to require the administrator of a multi-state benefit plan to manage the plan according to an assortment of requirements.[13]

1. Complying with Varying State Laws Would Significantly Complicate the Distribution of Death Benefits

Currently, the distribution of death benefits under the WCT Plan is a relatively simple process. For cases in

[13] While plan administrators currently follow the terms of Qualified Domestic Relations Orders ("QDROs") issued by state courts, ERISA Section 206(d)(3), 29 U.S.C. § 1056(d)(3), sets forth a single, uniform set of requirements for such orders. Those qualification requirements are generally easy to ascertain, making compliance with QDROs far easier than compliance with varying beneficiary designation laws. One of the difficulties in trying to follow the varying state laws is that the plan administrator will frequently be forced to prove the existence of a negative – that the participant was not a party to a divorce. Proving any negative is inherently fraught with difficulty. Here, the difficulty is particularly acute because a plan administrator would be hard pressed to independently confirm a participant's marital history. QDROs, on the other hand, do not present this problem because they must be served on the employee benefit plans to which they relate.

which the WCT Fund has a beneficiary designation card on file at the time of the participant's death, most death benefits are processed in the following three simple steps:

- One or more claimants send the WCT Fund an application for the death benefits.
- The WCT Fund determines which claimant is the participant's designated beneficiary by asking the claimant(s) to produce birth certificates or other identity records.
- The WCT Fund pays benefits to the designated beneficiary.

If this Court condones state regulation of the validity of a participant's beneficiary designation, the processing of death benefits will be significantly more complex. At a rate of over 7,000 applications per year,[14] the WCT Plan's administrators will need to undertake several additional steps to determine the proper recipient of the participant's death benefits. The distribution process would include:

- One or more claimants would send the WCT Fund an application for the death benefits.
- The WCT Fund would determine which claimant is the participant's designated beneficiary by asking the claimant(s) to produce birth certificates or other identity records.
- The WCT Fund would query each claimant whether that claimant, or any other claimant, was ever married to the participant, and if so, whether the marriage terminated in divorce.
- Where the participant was a party to a divorce, the WCT Fund would obtain a copy of the divorce decree and any related orders or agreements.

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[14] In the past three years alone, beneficiaries submitted over 23,000 claims for death benefits under the WCT Plan.

- The WCT Plan's counsel would determine what jurisdiction governs the claim and research, or update research, on the applicable law to determine the effect of divorce on the participant's beneficiary designation. (If counsel cannot make a certain determination of which jurisdiction controls, the WCT Fund would file an interpleader action.)
- Depending on the jurisdiction, the WCT Fund would evaluate whether the divorce documents evidence a clear and convincing waiver by the former spouse of his or her rights as the designated beneficiary. (If the existence of waiver is ambiguous, the WCT Fund would file an interpleader action.)
- The WCT Fund would determine whether the beneficiary designation remains effective under applicable state law or federal common law. (If the validity of the beneficiary designation is ambiguous, the WCT Fund would file an interpleader action.) If the beneficiary designation is valid, the WCT Fund pays the death benefit.
- If the applicable law invalidates the designation, the WCT Fund would determine what alternate disposition of the benefits the governing law requires. (If the WCT Fund cannot determine the alternate disposition with certainty, the Fund would file an interpleader action.) If the statute clearly identifies the alternate disposition of the death benefits, the WCT Fund would pay the benefits accordingly.

2. In Many Instances, Plan Administrators Will Be Unable to Determine the Controlling Law

Unfortunately, many of the steps required for a distribution pursuant to state laws would entail determinations that would often be difficult, if not impossible, for a plan administrator to make with certainty. For example,

when potential claimants reside in different jurisdictions or where the participant divorced in one state and died in another, resolution of the choice of law issues will be extremely complex.

Determining the scope and requirements of the laws can pose additional hurdles. For instance, Washington Revised Code Section 11.07.010 has been amended twice since its enactment in 1993 and, while the Washington Supreme Court found that the amendments were not relevant to this case, that conclusion requires a complicated legal analysis. Requiring such analysis would impose undue burden and expense on ERISA plans covering residents of multiple states. Worse, the ambiguities in such laws make a totally risk-free determination impossible.[15]

Beyond the problems caused by jurisdictions employing different tests to determine the impact of divorce

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[15] For example, upon reading amended Washington Revised Code Section 11.07.010(2)(a), which applies only to "nonprobate assets," the plan's counsel must make a threshold determination of whether benefits under the plan constitute nonprobate assets subject to the statute's reach. The Washington Code, however, contains three different versions of this critical definition, two of which have been repeatedly amended in the seven years since the enactment of Section 11.07.010. *See* WASH. REV. CODE § 11.07.010(5); WASH. REV. CODE § 11.02.005(15); and WASH. REV. CODE § 11.11.010(7)(a) and (b). One of these definitions, Section 11.07.010(5), limits the employee benefit plan assets within its scope to those payable pursuant to a "payable-on-death provision of a life insurance policy, employee benefit plan, annuity or similar contract, or individual retirement account. . . . " The inclusion of Egelhoff's 401(k) distribution does not neatly fall into the denotation of a "payable-on-death provision," presenting the plan administrator with a judgment call.

upon a beneficiary designation, the situation is exacerbated by courts' consideration of the parties' underlying relationship in assessing the pivotal issues. Courts which have engaged in such subjective analyses make clear that no plan administrator can reliably predict who is entitled to receive plan benefits.

For example, in *Mohamed v. Kerr*, 53 F.3d 911 (8th Cir. 1995), the Eighth Circuit explained that a property settlement agreement may effectively revoke a beneficiary designation, provided the agreement specifically divests the former spouse's rights as a plan beneficiary. However, having announced that rule, *Mohamed* examined not only the terms of the divorce agreement, but also the facts surrounding the divorce, finding the facts "especially compelling." *Id.* at 916. *Mohamed* notes that the former wife (and designated beneficiary) left her husband as a result of his being diagnosed with Alzheimer's disease. "Once [the husband] was diagnosed with the disease, [the wife] could not get away fast enough, and she never looked back. We do not believe it is putting too fine a point on it to say that she abandoned him to his illness." *Id. Mohamed* then holds that the wife had waived any claim she might have had to plan benefits. *Id.*

In contrast to *Mohamed* is *National Automobile Dealers and Associates Retirement Trust v. Arbeitman*, 89 F.3d 496 (8th Cir. 1996). *Arbeitman* acknowledged that the language in the divorce agreement before it was similar to that in *Mohamed*. *Arbeitman*, 89 F.3d at 501. However, equitable considerations led to a different result. In particular, *Arbeitman* noted that the husband and wife "maintained an amicable relationship" and that the husband paid more spousal and child support than he was legally obligated to provide. *Id.* The Eighth Circuit describes this as a "vastly different situation than we faced in *Mohamed*," and held that the divorce agreement did not

waive the wife's rights as the designated plan beneficiary. *Id.*

As *Mohamed* and *Arbeitman* demonstrate, regardless of whether one believes the respective decisions correctly balanced the equities and circumstances in the two cases, such a subjective approach requires a plan administrator to do more than research the law. The administrator must also conduct an investigation of the facts and circumstances surrounding a divorce. This makes efficient plan administration impossible.

Where resolution of a particular issue is ambiguous, actions taken by the administrator would expose a plan to a risk of having to pay the benefit to more than one person, thereby making it prudent to interplead the matter and have a court resolve the issue. Filing interpleader lawsuits, however, is not a panacea. While attorneys' fees are ostensibly available to a plaintiff initiating an interpleader suit,[16] in cases involving a relatively small benefit, the recovery of attorneys' fees from the stake could consume the entire benefit. As a practical matter, the plan administrator may be required to charge the expenses to the plan or the plan sponsor rather than recover them from the benefit. In addition, interpleader lawsuits require the claimants to retain counsel, creating additional expenses that may dwarf the benefit at issue. In the end, filing an interpleader lawsuit can, in effect, sacrifice the contested benefit.

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[16] Courts have discretion to award attorney fees to a disinterested stakeholder in an interpleader action under their inherent equitable powers. *See, e.g., Abex Corp. v. Ski's Enterprises, Inc.*, 748 F.2d 513, 516 (9th Cir. 1984); *Bank One, Texas, N.A. v. Taylor*, 970 F.2d 16, 22 (5th Cir. 1992).

3. Complying with State Regulation of Beneficiary Designations Is Costly

As the discussion above reflects, if ERISA plan administrators are put to the task of having to examine state laws whenever making a distribution, they will routinely need to hire legal counsel to locate and interpret these statutes and file interpleader suits.

Only two choices exist to fund the changes: either employers bear the brunt of the increased costs of administering benefit plans, or the additional expenses will be borne by the plan's participants and beneficiaries in the form of reduced benefits and/or lowered plan reserves. To the extent that the employers are saddled with the additional costs, those increases may well "lead those employers with existing plans to reduce benefits, and those without such plans to refrain from adopting them." *Estate of Altobelli v. International Business Machines Corp.*, 77 F.3d 78, 83 (4th Cir. 1996) (Wilkinson, C.J., dissenting) (citing *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 11 (1987)).

In addition to its financial costs, a state's usurpation of participants' rights to designate beneficiaries also reduces participants' and beneficiaries' certainty as to their rights under the plan. As this Court held in *Boggs v. Boggs*, the "assets of a plan, again with certain exceptions, are 'held for the exclusive purposes of providing benefits to participants in the plan and their beneficiaries and defraying reasonable expenses of administering the plan.' " 520 U.S. 833, 845 (1997) (quoting ERISA § 403(c)(1), 29 U.S.C. § 1103(c)(1)). Upholding Section 11.07.010 and statutes like it would preclude the fiduciary from meeting that obligation by requiring the distribution of benefits to someone other than a plan participant or designated beneficiary.

Moreover, disregarding a participant's beneficiary designation violates ERISA Section 404(a)(1)(D)'s mandate to administer a plan in accordance with its governing documents and instruments.[17] Congress required adherence to the governing documents in order to ensure that participants and beneficiaries can ascertain their benefit entitlements from a centralized source. In essence, Congress designed ERISA with the "statutory goals of efficiency in administration and certainty in expectations" in mind. *Estate of Altobelli v. International Business Machines Corp.*, 77 F.3d 78, 82-83 (4th Cir. 1996) (Wilkinson, C. J., dissenting).[18]

C. Given That ERISA Mandates How Benefit Distributions Be Paid, No Federal Common Law on the Subject Is Necessary

1. It Is Inappropriate to Fashion Federal Common Law Which Overrides the Terms of an ERISA Plan

As noted earlier, the WCT Fund presumes Petitioner and Respondents will fully brief the issue of whether Washington Revised Code Section 11.07.010 is preempted by ERISA. Accordingly, other than joining Petitioner and

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[17] A beneficiary designation is itself an instrument governing the plan. *See Metropolitan Life Ins. Co. v. Pettit*, 164 F.3d 857, 863 (4th Cir. 1998). In addition, employee benefit plans nearly universally require the distribution of benefits to either the participant or the participant's designated beneficiary.

[18] *See also, Krishna v. Colgate Palmolive Co.*, 7 F.3d 11, 16 (2nd Cir. 1993) ("It would be counterproductive to compel the Policy administrator to look beyond those designations into varying state laws regarding wills, trusts and estates, or domestic relations to determine the proper beneficiaries of Policy distributions").

other *amici* in urging that the Washington statute is preempted, the WCT Fund will not address that argument. However, the determination that the statute is preempted does not end the inquiry, as the court must determine how to treat the beneficiary designation before it. A number of courts, after finding a revocation-by-divorce statute preempted, have gone on to fashion "federal common law."[19] As discussed below, this Court need not and should not create federal common law governing the effect of a divorce upon a beneficiary designation.

It is true that federal courts can and do create federal common law to supplement federal statutory law. Moreover, Congress intended for federal courts to create a body of federal common law to govern ERISA cases. As this Court stated in *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 110 (1989):

> [W]e have held that courts are to develop a "federal common law of rights and obligations under ERISA-regulated plans." *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. at 56. See also *Franchise Tax Board v. Construction Laborers Vacation Trust*, 463 U.S. 1, 24, n. 26 (1983) (" 'a body of Federal substantive law will be developed by the courts to deal with issues involving rights and obligations under private welfare and pension plans' ") (quoting 129 Cong. Rec. 29942 (1974) (remarks of Sen. Javits)).

Though courts may in appropriate circumstances fashion federal common law to resolve issues arising in

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[19] *See, e.g., Hill v. A T & T Corp.*, 125 F.3d 646 (8th Cir. 1997); *Lyman Lumber Co. v. Hill*, 877 F.2d 692 (8th Cir. 1989); *John Hancock Mut. Life Ins. v. Timbo*, 67 F. Supp. 2d 413 (D.N.J. 1999); *Trustees of Iron Workers Local 451 Annuity Fund v. O'Brien*, 937 F. Supp. 346 (D. Del. 1996).

ERISA cases, it is impermissible to establish federal common law where to do so would conflict with the terms of ERISA itself. As stated in *Mertens v. Hewitt Associates*, "the authority of courts to develop a 'federal common law' under ERISA is not the authority to revise the text of the statute." 508 U.S. 248, 259 (1993) (citations omitted).

Indeed, as explained in *Nachwalter v. Christie*, 805 F.2d 956, 959-60 (11th Cir. 1986):

> The claim that Congress intended for the federal courts to create a body of federal common law to govern ERISA cases does not . . . give a federal court *carte blanche* authority to apply any prevailing state common law doctrine it chooses to ERISA cases. A federal court may create federal common law based on a federal statute's preemption of an area only where the federal statute does not expressly address the issue before the court. See C. Wright, Law of Federal Courts § 60, at 283-84 (3d. ed. 1976); see also *Textile Workers Union of America v. Lincoln Mills of Alabama*, 353 U.S. 448, 456-57, 77 S. Ct. 912, 918, 1 L. Ed. 2d 972 (1957). Furthermore, even when it is appropriate for a federal court to create federal common law, it may use state common law as the basis of the federal common law only if the state law is consistent with the policies underlying the federal statute in question; see *Lincoln Mills*, 353 U.S. at 457, 77 S. Ct. at 918; *Scott*, 754 F.2d at 1502; federal courts may not use state common law to re-write a federal statute.

An attempt to fashion a federal common law which provides for anything other than paying benefits to the designated beneficiary would effectively re-write ERISA. ERISA Section 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D), provides that a fiduciary shall discharge duties with respect

to a plan "in accordance with the documents and instruments governing the plan." Thus, ERISA explicitly instructs a plan administrator how to distribute benefits. If a plan provides that benefits are to be distributed to a beneficiary designated by a plan participant, distribution of benefits to anyone other than the designated beneficiary violates ERISA Section 404(a)(1)(D).

In *McMillan v. Parrot*, 913 F.2d 310, 311 (6th Cir. 1990), the Sixth Circuit recognized that ERISA Section 404(a)(1)(D) requires a plan administrator to comply with plan documents and beneficiary designations and, on that basis, rejected the argument that state law relating to waiver had been incorporated into federal common law. *McMillan* explained that a court must first look to ERISA itself, and only if ERISA provides no answer can a court proceed to create federal common law. *Id. McMillan* then held that ERISA provided the answer, and that resort to federal common law was therefore unnecessary:

> ERISA requires that a plan administrator discharge his duties "in accordance with the documents and instruments governing the plan. . . ." 29 U.S.C. § 1104(a)(1)(D) (1985). . . . This clear statutory command, together with the plan provisions, answer the question; the documents control, and those name [the former spouse].
>
> We believe this resolution fulfills the intent of Congress that ERISA plans be uniform in their interpretation and simple in their application. See H. Rep. No. 533, 93d Cong., 2d Sess., reprinted in 1974 U.S. Code Cong. & Admin. News 4639, 4650.

McMillan, 913 F.2d at 311-12. Accord, *Metropolitan Life Ins. Co. v. Marsh*, 119 F.3d 415, 420 (6th Cir. 1997) (ERISA Section 404(a)(1)(D) " 'establishes a clear mandate that plan administrators follow plan documents to determine

the designated beneficiary' ") (citation omitted); *Metropolitan Life Insurance Co. v. Pressley*, 82 F.3d 126, 130 (6th Cir. 1996); *see also Metropolitan Life Ins. Co. v. Hanslip*, 939 F.2d 904 (10th Cir. 1991). The WCT Fund submits that the Sixth Circuit cases properly decide this issue, and that this Court should announce that all courts faced with similar disputes should follow the rule established in *McMillan*.

However, the WCT Fund acknowledges that the *McMillan* approach is not the majority rule. Rather, while the majority of federal courts have ruled that state statutes or laws affecting the designation of a plan beneficiary are preempted by ERISA, most cases seem to follow that conclusion by fashioning federal common law. This common law generally turns on whether a designated beneficiary might have waived rights to ERISA plan benefits (based on, for example, the terms of a divorce agreement).[20] However, as shall be explained below, beyond ERISA's requirement to follow the terms of plan documents – including those relating to beneficiary designations – this Court should reject efforts to formulate federal common law that would permit overriding a plan participant's beneficiary designation.

2. A Federal Common Law Approach Is Warranted Only Where Established Common Law Principles Support a Consistent Rule

Even if one ignores the mandate of ERISA Section 404(a)(1)(D), any attempt to fashion a federal common law rule regarding the effect of a divorce on an earlier

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[20] *See, e.g., Dial v. NFL Player Supplemental Disability Plan*, 174 F.3d 606, 611 (5th Cir. 1999); *Mohamed v. Kerr*, 53 F.3d 911, 913 (8th Cir. 1995); *Brandon v. Travelers Insurance Co.*, 18 F.3d 1321, 1325 (5th Cir. 1994); *Fox Valley & Vicinity Construction Workers Pension Fund v. Brown*, 897 F.2d 275, 278 (7th Cir. 1990).

beneficiary designation must come to grips with precisely what law should be applied. As this Court stated in *Pilot Life v. Dedeaux*, 481 U.S. 41, 56 (1987), the development of a federal common law of rights and obligations under ERISA-regulated plans would make little sense "if the remedies available to ERISA participants and beneficiaries under § 502(a) could be supplemented or supplanted by varying state laws." *See also Mertens v. Hewitt Associates*, 508 U.S. 248, 264 (1993) (White, J. dissenting), ("Congress intended that the courts would look to the settled experience of the common law in giving shape to a 'federal common law of rights and obligations under ERISA-regulated plans,' " quoting *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 110 (1989)).

Here, however, there is no "settled" rule regarding how to resolve this issue. Instead, there are a multitude of varying laws, exactly what *Pilot Life* declares cannot form the basis of a federal common law. Moreover, even though numerous courts have purported to find various state statutes preempted, they have done so using a wink-and-nod preemption doctrine, using the same preempted law to form the basis for "federal common law."[21] Under such circumstances, to the extent that federal courts look to analogous state statutes to develop federal common law, irreconcilable conflicts will arise between and even within the circuits.

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[21] *See, e.g., Brandon v. Travelers Insurance Co.*, 18 F.3d 1321 (5th Cir. 1994) (Texas law preempted by ERISA but court uses the same Texas law in fashioning federal common law); *Fox Valley & Vicinity Construction Workers Pension Fund v. Brown*, 897 F.2d 275 (7th Cir. 1990), (after first stating that "ERISA preempts state pension benefit laws," court held that the district court properly fashioned federal common law based on what was characterized as "a closely analogous area of [Illinois] state law").

The Ninth Circuit faced this dilemma in *Cisneros v. Unum Life Insurance Co.*, 134 F.3d 939 (9th Cir. 1998), *cert. denied*, 526 U.S. 1086 (1999), in considering whether California's notice-prejudice rule should be adopted as federal common law in ERISA cases. *Cisneros* observed that the differences in the notice-prejudice rules of various states would make fashioning federal common law on the subject entirely unworkable:

> ERISA directs us 'to formulate a nationally uniform federal common law to supplement the explicit provisions and general policies set out in ERISA, referring to and guided by principles of state law when appropriate, but governed by the federal policies at issue.' We decline this invitation.
>
> It would appear that the federal common law we are directed to formulate must follow from preemption, not from a conclusion that the law is saved from preemption. Otherwise, laws from different states dealing with the same subject but with different results would end up in irreconcilable conflict with each other. For example, it has been brought to our attention that some States' notice-prejudice rules differ markedly from California's, some States presuming that the insurer has been prejudiced by late notice. If California's notice-prejudice rule requiring the insurer to prove actual prejudice is saved from preemption, then so would the other States' rules – but those rules would be inconsistent with any California inspired federal common law we might adopt. Moreover, which state law would prevail would depend only on which came first to the courthouse in this context. Such a result is patently untenable.

Cisneros, 134 F.3d at 947 (citations omitted). The same problem identified in *Cisneros* would plague any attempt

to fashion a federal common law rule regarding the effect of a divorce on an earlier beneficiary designation. This Court should reject any federal common law which would vary from region to region depending on what state's law was borrowed to shape the federal common law.

Simply put, ERISA expressly provides how to resolve the issue before the Court in this case and there is, therefore, no need to create or adopt federal common law on the subject.

The WCT Fund is cognizant of a number of times courts have attempted to fashion federal common law in cases addressing the effect of a divorce on an earlier beneficiary designation. However, it is submitted that those decisions have been driven more by a concern about results than by any real gap or interstice in ERISA.

In light of ERISA's mandate that benefit plans be administered according to their terms, a concern about results is not properly addressed by different courts in different jurisdictions fashioning different rules. Rather, it is the province of Congress to effect any changes to ERISA in conformance with what Congress finds is appropriate national policy. That is precisely what happened when Congress passed the Retirement Equity Act of 1984, Pub. L. No. 98-397, 98 Stat. 1426, creating a specific and narrow set of uniform rules governing Qualified Domestic Relations Orders.

Unless and until Congress amends ERISA with legislation which addresses the effect of divorce on beneficiary designations, this Court should hold that plan administrators are to administer ERISA plans and distribute benefits in accordance with the terms of the plans and their governing instruments. Such a rule furthers ERISA's goal of establishing an efficient means of administering plans, will preserve plan assets, and will still enable any

participant to be the master of who is to receive benefits upon that participant's death.

IV. CONCLUSION

For the reasons stated above, the WCT Fund respectfully urges this Court to reverse the decision of the Washington Supreme Court in the matter of *Egelhoff v. Egelhoff*.

Respectfully submitted,

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